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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic report of States parties due in 1996

Addendum

CANADA*

[19 October 1999]

* For the initial and second periodic reports of Canada, see CAT/C/5/Add.15 and CAT/C//17/Add.5; for their consideration, see CAT/C/SR.32, 33, 139 and 140 and Official Records of the General Assembly, forty-fifth and forty-eighth sessions, Supplements No. 44; (A/45/44), paras. 218-250; (A/48/44), paras. 284-310. The appendices referred to in the report may be consulted at the Office of the High Commissioner for Human Rights.

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* Geographical order, from east to west.

Introduction

1. The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) was ratified by Canada on 24 June 1987. This is Canada's third report under the Convention, covering the period from 1 April 1992 to 1 April 1996. Part I outlines generally Canada's constitutional structure as it relates to the Convention and Parts II, III and IV updates from the second report the measures undertaken at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

I: GENERAL INFORMATION

The Constitutional Structure of Canada – General

2. Canada is a federal State made up of ten provinces and two territories. Pursuant to the *Constitution Act, 1867* and amendments thereto, legislative powers are divided according to subject matter between the federal government and the ten provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights and hospitals. Examples of matters which fall under federal jurisdiction are criminal law and procedure in criminal matters, naturalization and aliens, and a residual power for the peace, order and good government of Canada.

3. Canada also has two territories in which the federal Government has jurisdiction to exercise both federal and provincial government powers. However, the federal Parliament has delegated to the territories many of the powers enjoyed by the provincial legislatures.

4. Due to this division of powers, federal, provincial and territorial Governments are all involved in the implementation of the provisions of the Convention against Torture. Because the role of security personnel is especially important for the purposes of this Convention, a detailed explanation is given below on how the federal and provincial governments share responsibility in this area.

5. The Government of Canada has submitted a core document forming part of the reports of States parties (HRI/CORE/1/Add.91). The core document examines, in detail, Canada's constitutional structure, its political framework, and the general framework within which human rights are protected. The latter includes a discussion of constitutional and legislative protections for human rights, available remedies for redress of human rights violations, and the relationship between international human rights instruments and domestic law. This third report under the Convention should be read in conjunction with the core document.

General legal framework and remedies pertaining to the elimination of torture

6. An individual who alleges a violation of the Convention has recourse to a variety of remedies, including remedies under the *Canadian Charter of Rights and Freedoms* (the Charter). The Charter was incorporated into the Canadian Constitution on 17 April 1982, by virtue of the *Constitution Act, 1982*. It guarantees a variety of fundamental freedoms and legal rights, including the right of everyone not to be subjected to any cruel and unusual treatment or punishment (section 12). Section 1 of the Charter provides that the rights and freedoms contained therein may be limited to the extent that such a limit is prescribed by law and demonstrably justified in a free and democratic society. The Supreme Court of Canada has indicated that in order for a limit on

a Charter right to meet the requirements of section 1, the limit must serve a pressing and substantial objective and employ proportionate means to attain that objective.

7. Section 32 of the Charter guarantees the rights of private persons as against action by the federal and provincial legislatures and governments. This section has been interpreted by the courts to apply to the full range of government activities, including administrative practices and the acts of the executive branch of government, as well as to enactments of Parliament or the legislatures.

8. In addition, Canadian law, particularly the *Criminal Code* and specific legislation and regulations governing the conduct of police, correctional service officers and army personnel, provides recourse to an individual who alleges a violation of the Convention.

International law in Canada

9. In Canada, international treaty law is not automatically part of domestic law. Rather, the provisions of a treaty must be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or the other, or both levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and often as well, the territorial legislative assemblies.

10. Under the Canadian Constitution, the federal Parliament does not have the legislative power to give effect to all the obligations which Canada assumed when ratifying the Convention. Thus, prior to ratification, the federal and provincial governments engaged in extensive consultations which resulted in provincial governments undertaking to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

11. Canada is also party to the *International Covenant on Civil and Political Rights* and the *Optional Protocol* to that Covenant, permitting individuals to bring communications to the United Nations Human Rights Committing alleging violations of the Covenant and in particular, article 7, the prohibition against torture and cruel, inhuman or degrading treatment or punishment. Since 1990, Canada is also a member of the Organization of American States. Individuals may bring complaints before the Inter-American Commission on Human Rights, based on the *Declaration on the Rights and Duties of Man*, including article 1, the right to life, liberty and security of the person.

Canada's constitutional structure as it relates to security personnel

12. This section explains the constitutional responsibility between the federal and provincial governments in Canada for security personnel.

The Royal Canadian Mounted Police

13. Responsibility for law enforcement in Canada is shared between the federal and provincial governments. The Royal Canadian Mounted Police (the RCMP), established by the *Royal Canadian Mounted Police Act*, is a federal police force and is authorized to enforce federal laws anywhere in Canada. However, as a federal police force, the RCMP cannot enforce provincial or municipal laws unless clearly authorized to do so by provincial legislation. This is because the provinces are responsible for the enforcement of all laws of general application within their territorial limits. With respect to criminal law, there is an overlap in that the federal Government is responsible for enacting criminal law and procedure which applies throughout Canada and is set out

in the *Criminal Code*. The enforcement of criminal law, the prosecution of criminal offences and the administration of justice in the province are generally matters within provincial responsibility.

14. Nevertheless, the two territories and all the provinces, except Ontario and Québec (which have established their own provincial police forces), have entered into contractual arrangements with the federal Government whereby the RCMP acts as the provincial, and in some instances, municipal police force. In this role, the RCMP enforces provincial law, some municipal by-laws and the *Criminal Code*.

15. However, it is important to note that, as a matter of constitutional law, no provincial authority can intrude into the internal management of the RCMP, which remains with the RCMP Commissioner, who is in turn responsible to the federal Solicitor General. This means that the disciplining of RCMP members, whether they are acting in a federal or provincial policing capacity, is an exclusively federal responsibility.

Correctional Services

16. The federal Government, the ten provincial governments and the two territorial governments share responsibility for the adult correctional system such that Canada has, in effect, 13 correctional systems. (Juvenile corrections, although governed by the federal *Young Offenders Act*, is administered solely by the provinces and territories.)

17. Under the *Constitution Act, 1867*, the federal Government is authorized to establish and administer penitentiaries housing persons sentenced to prison terms of two years or longer. On the other hand, the provinces are responsible for the administration of correctional institutions housing persons sentenced to prison terms of less than two years.

18. The Correctional Service of Canada (the CSC) is the agency responsible for administering federal sentences (i.e. two years or longer). This responsibility includes both the management of institutions of various security levels and the supervision of offenders under conditional release from the institution.

II: MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

General

19. Canada's first report outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture. These include:

- The *Canadian Charter of Rights and Freedoms* (attached as appendix GC-1), and in particular the right not to be subjected to any cruel and unusual treatment or punishment (section 12), the right to life, liberty and security of the person (section 7) and the right not to be arbitrarily detained or imprisoned (section 9);

- Section 269.1 of the *Criminal Code* which contains a specific offence of torture based on the definition in article 1 of the Convention;

- Other *Criminal Code* offences relating to the prohibition against torture and cruel, inhuman or degrading treatment or punishment such as assault, causing bodily harm with intent to wound a person or endanger life, murder, administering a noxious thing, extortion, and intimidation; and

- Legislative, regulatory and administrative provisions governing the use of force by police and correctional agencies such as RCMP Code of Conduct offences, and the Penitentiary Service Regulations.

20. Canada's second report noted two further developments:

- The coming into force of section 7(3.71) of the *Criminal Code* which makes war crimes and crimes against humanity a criminal offence; and

- Canada's ratification of the *Protocols Additional to the Geneva Conventions of 12 August 1949* on 20 November 1990.

21. Developments of note since the second report include a complete review of the Operational Manual within the RCMP to eliminate any barriers to community policing initiatives. Moreover, the policy principles of policing by way of equality, integrity, and respect are being strengthened. RCMP policy on the treatment of prisoners, and interviews and interrogations will be coming under scrutiny incidental to this review. There will be no change, however, to the policy of the RCMP with regard to conduct which could come within the meaning of torture as defined in the Convention.

Factors and difficulties

(a) Events relating to the deployment of Canadian Forces in Somalia

22. In 1993, members of the Canadian Airborne Regiment were stationed at Belet Huen as part of the United Nations efforts in Somalia when a Somali male, Shidane Arone, was beaten to death after he was found and apprehended inside the Canadian compound. The Canadian Forces, in particular the military police, assisted by a military medical officer (pathologist), a civilian forensic pathologist and a civilian police ballistics expert, investigated this incident, as well as the unrelated death of another Somali in March 1993.

23. As a result of these investigations, nine soldiers ranging in rank from private to lieutenant-colonel were charged with a variety of offences and tried by general courts-martial. The general courts-martial, which are composed of a jury of five officers advised by a military judge, took place at Canadian Forces Base Petawawa or in Ottawa, both in Ontario, Canada.

24. The first four courts-martial, commenced in November and December 1993, were aborted as the charges had been laid by the commanding officer while he was under investigation himself. The trials for these accused were recommenced pursuant to new charges ranging from murder and torture in the beating death of the Somali youth to unlawfully causing bodily harm and negligent performance of duty. The specific charges and the results of each of the courts-martials are set out below.

25. Private Brown was charged with second-degree murder and torture in relation to the death of Shidane Arone. The maximum punishment Private Brown faced was life imprisonment with a period of parole of ineligibility between 10 and 25 years.

26. At his court-martial in February and March 1994, Private Brown was convicted of manslaughter and torture and sentenced to five years' imprisonment and to dismissal with disgrace from the Canadian Forces. Private Brown appealed these convictions to the Court-Martial Appeal Court (CMAC), which is composed of civilian superior, federal and appellate court judges. The prosecution appealed Private Brown's sentence asking for an increase to ten years' imprisonment. In January 1995, the CMAC upheld both the conviction and sentence of the court-martial. Private Brown applied for leave to appeal this decision to the Supreme Court of Canada (SCC), which refused leave.

27. Sergeant Gresty was charged with two counts of negligent performance of a military duty, in particular that he failed to remain awake the night of 16 March and that he failed to intervene to stop Arone's mistreatment. The maximum period of imprisonment upon conviction for these offences was two years less a day. At his trial, in March and April 1994, he was found not guilty of both charges. No appeal was taken from this decision.

28. Master Corporal Matchee was charged with second-degree murder and torture in relation to the death of Arone. Evidence at the other courts-martial before and since has portrayed Master Corporal Matchee as the main perpetrator in Arone's death. The maximum punishment he faced was life imprisonment with a period of parole ineligibility of between 10 and 25 years. At his trial in April 1994, in Ottawa, on a preliminary motion, he was found unfit to stand trial by reason of a mental disorder, namely permanent organic brain damage. This injury was caused by a lack of oxygen to the brain suffered during a failed suicide attempt after his arrest in March 1993 for his part in the death of Arone. Master Corporal Matchee has since been released from the Canadian Forces and has been turned over to civilian medical authorities. Should his condition ever improve sufficiently, he may be subject to a resumed trial on these charges.

29. In April 1994, Sergeant Boland, the guard commander, was charged with torture and negligent performance of a military duty, namely to safeguard Arone. Sergeant Boland pleaded guilty to the negligence charge and the torture charge was stayed. He was sentenced to 90 days' detention and an automatic reduction to the rank of private. The prosecution appealed this sentence, seeking an increase to 18 months' imprisonment. In April 1995, the CMAC granted the prosecution's appeal and increased the sentence to a total of one year's imprisonment. Private Boland has now served his sentence and has been released from the Canadian Forces.

30. Major Seward, who was effectively the company commander of the personnel involved in Arone's death, was charged with unlawfully causing bodily harm and negligent performance of a military duty arising from instructions he gave his soldiers that detainees could be abused. His court-martial was held in May and June 1994. Major Seward was acquitted of the assault charge, but convicted on the negligence charge and sentenced to a severe reprimand. The prosecution appealed the sentence awarded, seeking a term of imprisonment. Major Seward appealed the conviction of negligence. The CMAC heard both appeals in January 1996 and increased the sentence to three months' imprisonment and dismissal from the Canadian Forces.

31. Trooper (Private) Brocklebank was charged with torture and negligent performance of a military duty relating to his involvement in the death of Arone. He faced a maximum punishment of 14 years in prison if convicted. At his court-martial in October and November 1994, he was acquitted of both charges. The prosecution appealed both acquittals, but the CMAC rejected the prosecution's appeal in April 1996.

32. Captain Sox, the platoon commander of the soldiers who captured Arone, was charged with unlawfully causing bodily harm, negligent performance of a military duty in failing to control his subordinates and an act to the prejudice of good order and discipline in passing on Major Seward's

orders that detainees could be abused. He faced a maximum ten-year prison sentence. Captain Sox was acquitted on the bodily harm charge, convicted on the negligence charge and the act to the prejudice charge was stayed. Captain Sox was sentenced to a reduction in rank to lieutenant and a severe reprimand. Both sides appealed aspects of the court-martial decisions to the CMAC. The CMAC heard the appeals in April 1996; the appeals were rejected by the CMAC in July 1996.

33. The commanding officer, Lieutenant-Colonel Mathieu, was charged with negligent performance of a military duty arising from orders he gave which altered the rules of engagement pertaining to looters. There was, however, no direct connection between these orders and Arone's death. The maximum period of imprisonment to which he was liable was two years less a day. In June 1994, Lieutenant-Colonel Mathieu was acquitted. The prosecution successfully appealed that acquittal. In November 1995 the CMAC ordered a new court-martial on this charge, which was held in January and February 1996. Lieutenant-Colonel Mathieu, who had retired from the Canadian Forces in 1995, was again acquitted upon this charge.

34. Finally, the court-martial of Captain Rainville on four charges, including unlawfully causing bodily harm and negligent performance of a military duty (which attract a maximum period of imprisonment of ten years) was held in September and October 1994. These charges related to an incident on the night of 4 March 1993 in which members of Captain Rainville's platoon shot two Somalis, who were suspected of attempting to break into the Canadian camp at Belet Huen. One Somali was wounded and the other killed. The charges allege that Captain Rainville improperly authorized his soldiers to open fire on suspected looters. He was acquitted on these two charges and no appeal was taken from this decision.

35. In addition to the above disciplinary proceedings, on 28 April 1993, the then Chief of Defence Staff, Admiral Anderson, ordered an extensive military Board of Inquiry into the Canadian Forces' general involvement in Somalia. That Board adjourned and issued an interim report when the above disciplinary proceedings rendered further work impossible. In light of the civilian inquiry described below, this Board of Inquiry has been dissolved.

36. On 20 March 1995 the Government of Canada established a public inquiry into the deployment of the Canadian Forces to Somalia in 1992-1993. The deaths of several Somali citizens at the hands of Canadian soldiers, particularly the beating death of Shidane Arone, was a significant contributing factor to the establishment of the public inquiry. However, the inquiry's mandate was not to try or retry cases which had already been dealt with under the military justice system. The Somalia Inquiry's mandate was to look at the chain of command, leadership within the chain of command, discipline, operations, actions and decisions of the Department of National Defence in respect of the pre-deployment, in-theatre and post-deployment phases of the Canadian Forces' deployment to Somalia.

37. Chairing the Commission was Mr. Justice Gilles Létourneau of the Federal Court of Appeal. The other Commissioners were Mr. Justice Robert Rutherford, judge of the Ontario Court, General Division, and Mr. Peter Desbarats, Dean of the Graduate School of Journalism, University of Western Ontario. The Commission, after conducting extensive hearings, submitted its final report to the Governor-in-Council on 30 June 1997.

(b) The *R. v. Finta* Case

38. The *Criminal Code of Canada* gives Canadian courts jurisdiction to try war crimes and crimes against humanity that are committed outside Canada. This jurisdiction is carefully circumscribed. The definitions of "war crime" and "crime against humanity" in the Code are tied to

the state of international law at the time and in the place of the commission of the alleged offence. The *Criminal Code* also provides that the rules of law relating to procedure and evidence in force at the time of the proceedings will apply to the proceedings.

39. On 24 March 1994, the Supreme Court of Canada, in *R. v. Finta*, reviewed the *Criminal Code* provisions on war crimes and crimes against humanity. The Court determined that Parliament created two new offences of war crimes and crimes against humanity which, unlike other domestic offences, require fundamentally important additional *actus reus* and *mens rea* elements. The Court also held that the defence of obedience to superior orders and the peace officer defence are available to members of the military or police forces in prosecutions for war crimes and crimes against humanity, provided that the orders in question were not manifestly unlawful. Yet, even where the orders are manifestly unlawful, the defences will still be available to the accused where the accused had no moral choice but to follow orders.

40. On 31 January 1995, the Minister of Citizenship and Immigration and the Minister of Justice and Attorney General of Canada announced a Second World War War Crimes Strategy, which aimed at deporting and revoking the citizenship of alleged Second World War criminals living in Canada. The announcement also indicated that in light of the *Finta* decision areas of possible legislative change are being reviewed to ensure that criminal prosecution is an option for war crimes and crimes against humanity cases.

Article 3

The immigration context

(a) General

(i) The formal refugee process

41. Canada acceded to the *Convention relating to the Status of Refugees* on 4 June 1969 and it entered into force on 2 September 1969. Consequently, Canada has bound itself not to expel from its territory persons from other States, whether nationals of those States or residents not having a State of nationality, should those persons be unable or unwilling to return to, or avail themselves of, the protection of their State of nationality or origin for reasons of race, religion, nationality, membership in a particular social group or political opinion (see sections 2(1)(a) *Immigration Act* S.C. 1985, c. I-2, attached as appendix GC-2). Canada also provides similar protections for persons who, while not strictly refugees on the basis of the Refugee Convention, are nevertheless displaced or persecuted (see sections 6(2) and para. 114(1)(d), *Immigration Act*).

42. The *Immigration Act* sets out the procedure for obtaining refugee status in Canada. The Government substantially amended the *Immigration Act* on several occasions, in part due to the arrival of massive numbers of new refugee claimants in Canada. Amendments were made to the *Immigration Act* on 1 January 1989 and again, on 1 February 1993 to improve and streamline the immigration and refugee determination system.

43. A refugee claim is submitted to the Immigration and Refugee Board, an independent administrative tribunal with the mandate to determine refugee claims. In applying the definition of Convention refugee, the members of the Immigration and Refugee Board hearing the refugee claim have to determine whether the claimant has a well-founded fear arising from persecution based upon one of the grounds listed in the *Refugee Convention*. The burden of proof, which is lower than the civil standard of a balance of probabilities, rests with the claimant. In order to succeed, a claimant

must prove that his or her fear is based on a reasonable possibility that s/he would be persecuted if returned to the country of origin.

44. The *Immigration Act*, and the 1951 Convention, do not define the term "persecution". However, the Federal Court of Appeal in *Chan v. M.E.I.* [1993] 3 F.C. 675 stated that torture, beating and rape are examples of persecution. In determining whether an act amounts to torture, and thus persecution, the Immigration and Refugee Board has frequently referred to the definition of torture in the Convention against Torture. For example, the Board used the Convention definition of "torture" to determine if the sexual and domestic violence suffered by the claimant in that case amounted to "torture" and, therefore, constituted persecution.

45. While the definition of Convention refugee defines a well-founded fear of persecution in terms of future action, section 2(3) of the *Immigration Act* provides that individuals can be held to be Convention refugees, based on previous persecution. The Federal Court of Canada has also applied this provision to victims of torture.*

46. In evaluating the well-founded aspects of the claimant's prospective fear of return, the Immigration and Refugee Board members render a decision after a hearing in which claimants are given the chance to present the facts supporting their claims. In its hearings, the Immigration and Refugee Board often receives medical evidence from medical practitioners which, based on the physical evidence and the psychological profile of the claimant, may support findings of torture. Failure by the Board to consider such evidence appropriately will probably lead to its decision being overturned by the Federal Court of Canada.

47. Members of the Immigration and Refugee Board also receive ongoing training on victims of torture by representatives of the Canadian Centre for the Victims of Torture and the Office of the United Nations High Commissioner for Refugees (UNHCR). Furthermore, due to the psychological conditions of claimants who have been the victims of torture, the Board will provide, whenever possible, hearing-room participants that are gender and culturally sensitive to the claimants.

(ii) Humanitarian and compassionate review

48. In addition to the formal refugee claim process outlined above, the Department of Citizenship and Immigration conducts a broader discretionary review under section 114(2) of the Immigration Act to determine whether extraordinary circumstances warrant granting that individual landing or permanent resident status. These reviews may be initiated internally within the Department or at the request of the refugee claimant. In theory, there is no limit to the number of times a person may apply for a humanitarian and compassionate review.** It is not unusual for individuals to apply several times.

49. Immigration officials review the applicant's written submissions and immigration file and may interview applicants. The Department of Citizenship and Immigration has developed guidelines to assist officers in properly assessing humanitarian and compassionate applications. The guidelines focus on the applicant's degree of attachment to Canada, such as marriage to a Canadian citizen or permanent resident, the personal circumstances of the applicant and his or her family members, and the hardship that would result should the applicant be removed from Canada and be required to apply for permanent residency from abroad.

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* See the case of Adaros-Serrano (1993) 22 Imm. L. R. (2d) 31.

** This review is available upon application and the payment of the requisite processing fee.

50. These guidelines also extend to an assessment of risk to a person who may not fall within the scope of the Refugee Convention, but may nonetheless face mistreatment abroad. With respect to risk assessment, the guidelines state:

> "Humanitarian and compassionate grounds exist when unusual, undeserved or disproportionate hardship would be caused to the person seeking consideration if he or she had to leave Canada. [... Some persons] may warrant consideration because of their personal circumstances in relation to current laws and practices in their country of origin. Such persons could reasonably expect unduly harsh or inhumane treatment in their country should they be removed. In these cases, there should be strong reasons to believe that the person will face a life threatening situation in his or her homeland as a direct result of the political or social situation in that country. Such situations are more likely to occur in countries with repressive governments or those experiencing civil strife or at war."

51. A positive determination means that there are sufficiently compelling humanitarian and compassionate considerations to allow an individual to apply for and be granted permanent resident status. A decision that there are insufficient humanitarian and compassionate considerations to warrant this exceptional processing means that the applicant must comply with any removal order previously made. However, the individual is thereafter able to apply for permanent residency from abroad.

52. An individual may seek judicial review of a negative decision of an immigration official, with leave, before the Federal Court Trial Division. A decision of the Trial Division can be appealed to the Federal Court of Appeal if the judge of the Trial Division certifies that the case raises a serious question of general importance. A decision of the Federal Court of Appeal can be appealed, with leave, to the Supreme Court of Canada.

(iii) Post-claim risk assessment

53. When the amendments to the *Immigration Act* came into force on 1 February 1993, new regulations under the Act established new procedures for persons found not to be Convention refugees. Part of the regulatory amendments involved the creation of a class entitled the post-determination refugee claimants in Canada class (PDRCC). The Government's objective in creating this class was to identify individuals who, though determined not to be Convention refugees, face a serious risk of harm should they be returned to their country of origin. Individuals determined to be subject to such risk are able to apply for permanent residency in Canada under the Regulations.

54. The regulatory criteria for determining whether a person can benefit from inclusion in the class provide:

> "member of the post-determination refugee claimants in Canada class means an immigrant in Canada
>
> "(a) who the Refugee Division has determined on or after February 1, 1993, is not a Convention refugee [...]

"(c) who if removed to a country to which the immigrant could be removed would be subjected to an objectively identifiable risk, which risk would apply in every part of that country and would not be faced generally by other individuals in or from that country,

(i) to the immigrant's life, other than a risk to the immigrant's life that is caused by the inability of that country to provide adequate health or medical care,
(ii) of extreme sanctions against the immigrant, or
(iii) of inhumane treatment of the immigrant [.]"

55. In this risk-assessment process, refugee claimants have an opportunity to make written submissions on the risks they would face if removed from Canada. They are formally advised of their ability to invoke this process.

56. Post-claim determination officers are provided with guidelines to be used in making their risk-assessment decisions. In the decision-making process, a post-claim determination officer reviews any submissions filed, as well as other relevant and available material, such as the individual's immigration file and material from the Refugee Division hearing (including the individual's personal information form, transcripts of the proceeding, relevant documentary evidence on country conditions presented at the refugee hearing, and the Refugee Division's decision). The post-claim determination officer may also consult recent country-specific information from other sources such as Amnesty International and other documentation available from the Refugee Board's Documentation Centre.

57. When a post-claim determination officer concludes that removal from Canada would engender an objectively identifiable risk as defined, the individual at risk is able to apply for permanent residency, provided that he or she meets the criteria for granting this status set out in the Regulations. A decision that the individual has not met the risk-assessment criteria is subject to judicial review proceedings, with leave, before the Federal Court Trial Division. Further judicial recourse may be sought before the Federal Court of Appeal, and the Supreme Court of Canada.

58. Claimants thus benefit from a second opportunity to present the facts supporting a fear to return to the country of residence or citizenship by submitting an application to specifically trained immigration officers. This training includes training related to international instruments including the Convention against Torture and is given by specialists involved with the Canadian Centre for the Victims of Torture, medical practitioners and by representatives of the Department of Justice of Canada.

59. As well, where credible allegations of acts of torture or crimes against humanity are brought to the attention of the Government of Canada against individuals present in Canada but facing removal, Canada investigates the possibility of prosecuting in relation to these allegations.

(b) Factors and difficulties

60. In 1994, the Committee against torture considered communication No. 15/1994 submitted by Mr. Khan in which he alleged a violation of article 3 of the Convention resulting from a decision by Canadian authorities to return Mr. Khan to Pakistan, his country of origin. The Committee held that substantial grounds existed for believing that Mr. Khan would be in danger of being subjected to torture upon his return to Pakistan.

61. On 3 March 1995, the Government of Canada requested that the Committee reconsider its Views on communication No. 15/1994 with respect to certain jurisdictional issues, evidentiary standards and the relationship between article 3 of the Convention and the *Convention relating to the Status of Refugees*. In response, the Committee addressed the issues raised in Canada's note verbale and concluded that it had no legal basis on which to revise its decision of 15 November 1994.

62. As a result of the Khan decision and other complaints pending before the Committee Against Torture, the Government of Canada is reviewing its immigration procedures to ensure that medical and other evidence relating to the risks associated with a return to countries of origin is considered by authorities early in the domestic immigration proceedings. As well, the Government of Canada is reviewing the models used by other countries to assess risk of torture or other cruel or inhuman treatment.

The Extradition Context

63. The second report noted that in the cases of *Kindler v. Canada (Minister of Justice)* and *Ng v. Canada (Minister of Justice)*, the Supreme Court of Canada held that the law of extradition and its exercise by the Minister was subject to section 7 of the Charter: the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. According to the Court, extradition will offend section 7 if the imposition of the penalty by the foreign State would shock the Canadian conscience. The Court noted that torture is a penalty so outrageous to the Canadian community that surrender would always be unacceptable.

64. In three decisions rendered on 19 March 1996 and a fourth delivered on 3 April 1996, the Supreme Court of Canada had to determine whether or not the extradition of fugitives to a jurisdiction with mandatory minimum sentences would offend section 7 of the Charter. (See *Canada (Minister of Justice) v. Jamieson, Ross v. United States of America, Whitley v. United States of America* and *Leon v. United States of America.)* In each of these cases, the fugitives claimed that extradition to the United States would violate section 7 of the Charter because, if found guilty, they would face prison terms beginning with mandatory minimum terms of 10-20 years.

65. In these cases, the Court held that the penalties and the procedures that the fugitive would face in the United States would not "shock the conscience" or be considered "simply unacceptable" by the Canadian public. In the Court's view, the test is not whether the sentence in the United States would be considered fair and just in Canada or in conformity to the Charter, but whether or not the consequences of an extradition are unconscionable or unacceptable. Extradition should be refused only where the sentence is so grossly disproportionate to the gravity of the alleged offence that it is fundamentally unjust.

66. A relevant consideration for the Court was that though the penalties in the United States are more severe, they are neither arbitrary nor capricious, and are democratically decided upon. The Court also took into consideration the factual circumstances of these cases, and found that the sentences, which were for drug offences, could be justified due to the seriousness of the problem in the United States. Further, the judicial system of the United States affords an accused certain procedural protections and the opportunity to present a defence.

67. The Court also adhered to previous cases which had held that the judiciary should not lightly interfere with executive decisions and the exercise of prosecutorial discretion. Taking into consideration the executive's expertise and its duty to ensure that Canada meets its treaty obligations, judicial intervention is to be limited to the clearest of cases.

Article 4

68. In the past, the Committee has asked for statistics about prosecutions for torture under the *Criminal Code* in Canada. The Canadian Centre for Justice Statistics does not have records of convictions for all offences under the *Criminal Code*. Although it appears that there have not been any prosecutions for torture, it is hard to determine this point definitively as prosecution of criminal offences falls within provincial jurisdiction.

69. As mentioned in the discussion under article 2 in this report, members of the Canadian Airborne Regiment of the Canadian Forces were charged with a variety of offences, including torture, and tried by general courts-martial in relation to events in Somalia during the deployment of Canadian Forces as part of the United Nations efforts in Somalia. The more detailed discussion under article 2 sets out the nature of the charges and the results in each proceeding. The judgement of the Court-Martial Appeal Court in *R. v. Brown* is attached as appendix GC-3.

Article 6

70. Canada's first report indicated that a peace officer who has reasonable grounds to believe that a person has committed an indictable offence such as torture may arrest that person without warrant for the purpose of criminal proceedings. All extradition treaties entered into by Canada provide that a provisional warrant of arrest may be obtained to secure the physical custody of fugitive. However, a person arrested for the purpose of extradition will be set at liberty if proper supporting documentation is not received within a certain period of time, normally 45 days.

71. The first and second reports indicate that the Operational Manual of the RCMP addresses the requirements of paragraph 3 of article 6.

Article 8

72. Canada's second report stated that a multilateral agreement to which Canada is a party and which provides for the extradition of individuals for certain offences, operates as a binding arrangement for the purposes of the *Extradition Act*. This is so regardless of whether there is a treaty in force between Canada and the other State party and regardless of whether the treaty has been expressly promulgated into law. Thus, the Convention may be used by Canada as the basis for an extradition to another State party.

Article 9

73. The second report noted that the *Mutual Legal Assistance in Criminal Matters Act* provides the legal framework for the implementation of treaties between Canada and other States for the purposes of fostering cooperation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (i) the gathering of evidence, including taking statements and testimony; (ii) the execution of search warrants; (iii) the temporary transfer of prisoners for the purpose of testifying or providing other assistance; (iv) the lending of exhibits; and (v) assistance with respect to proceeds of crime.

74. Between 1 April 1992 and 1 April 1996, Canada entered into treaties pursuant to the Act on mutual legal assistance with various countries, including China, India, Italy, Korea, Spain, Switzerland, and Thailand. In the event of an alleged case of torture and in absence of a mutual legal assistance treaty, mutual assistance would also be available on the basis of ad hoc administrative arrangements or on the basis of non-treaty assistance.

Article 10

General

(a) Royal Canadian Mounted Police

75. The second report noted that the type of training RCMP recruits receive is based on two fundamental principles:

(a) The avoidance of force, if at all possible, in achieving the objectives of law enforcement; and

(b) Restraint, i.e., only as much force as is reasonable and necessary.

76. This training, described more extensively in the second report, includes a session on the prohibition against torture in the course on "Criminal Law" under the topic of "Arrest, Release and Detention". Training in relation to the *Canadian Charter of Rights and Freedoms* is also provided.

(b) Correctional Service of Canada

77. The second report noted that all employees of the CSC receive training on the policy and application of the use of force, including courses on the prohibition on torture and similar acts.

78. Employees are instructed on the interpretation and application of those provisions of the *Criminal Code* and of CSC Directives, Standards and Guidelines which relate to the use of force, for example, in the context of courses such as arrest, control and the use of weapons and chemical agents. As well, they receive training in the interpretation and application of legislation which prohibits torture and other cruel, inhuman or degrading punishment (e.g. the *Canadian Charter of Rights and Freedoms* and the *Corrections and Conditional Release Act*).

79. The duration of orientation training ranges between one week for staff with no contact with offenders to 12 weeks for correctional officers. Medical officers receive eight weeks' training. Refresher courses are offered on a regular basis.

(c) Department of National Defence

80. Members of the Canadian Forces called upon to assist civil authorities during a riot or disturbance in Canada receive specific training on the use of minimum force. The level of force authorized in such operations is similar to that authorized for other peace officers.

81. Members of the Canadian Forces deploying on all international operations receive training on the rules of engagement applicable to a particular operation, as well as the Soldiers Code of Conduct. Rules of engagement will contain specific direction on the treatment of detainees if the apprehension and detention of persons is authorized for the operation. The Soldiers Code of Conduct summarizes humanitarian treaties, conventions and customs binding on Canada under

international law. Specifically, rule No. 8 of the Soldiers Code of Conduct states: "In accordance with the Convention on Torture, do not torture, kill or abuse detainees. They are to be treated humanely and afforded adequate food, water, shelter and medical care".

Other

82. The Canadian Centre for Victims of Torture (the CCVT) was established in 1983 to respond to the unique needs of torture victims and their families and to increase public awareness in Canada and abroad of torture and its effects in Canada. The federal Government, and in particular Human Resources Development Canada, funded various projects of the CCVT, including funding for a project to train practitioners, staff and others working with survivors of torture.

Article 11

Factors and difficulties: CSC

83. In April 1994, inmates at the Prison for Women in Kingston assaulted six correctional officers, seriously injuring two. (Five inmates were subsequently convicted of assault, attempted hostage-taking, attempted escape and assaulting a peace officer.) As a result of this incident, the inmates were placed in segregation and, when seriously disruptive behaviour continued in segregation, the Institutional Emergency Response Team (IERT) was brought in from Kingston Penitentiary. Over the course of eight hours, all the inmates in segregation were placed in restraint equipment, stripped of regular clothing and placed in paper gowns by female officers in the presence of and, when required, with the assistance of the all-male emergency response team. The treatment of the inmates was subsequently investigated by an internal Board of Investigation convened by the Commissioner of Corrections and by the Correctional Investigator, an ombudsman for inmates in federal correctional institutions. The reports of these two investigations differed both in matters of fact and interpretation of the findings.

84. On 10 April 1995, the Honourable Louise Arbour, Justice of the Court of Appeal of Ontario, was appointed to head the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*. The inquiry was convened following receipt by the Solicitor General of the conflicting reports from the Correctional Service and Correctional Investigator as to the events which took place at the Prison for Women.

85. Justice Arbour's mandate was to "investigate and report on the state and management of that part of the business of the Correctional Service of Canada that pertains to the incidents which occurred at the Prison for Women in Kingston, Ontario, beginning on April 22, 1994 and further, to make recommendations to the policies and practices of the Correctional Service of Canada in relation to the incidents."

86. The Solicitor General released the report of the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (attached in appendix GC-4) to the public on 1 April 1996. As a result of the tabling of the report, the Solicitor General asked the Deputy Solicitor General to convene a senior-level Steering Committee composed of representatives from various government departments to examine the findings and recommendations and report back to him.

87. At its first meeting, the Steering Committee established a working group, composed of members from the Steering Committee's departments, to review and develop an appropriate response to the Arbour report's recommendations.

88. The following key recommendations were accepted:

- The appointment of a Deputy Commissioner of Women's Corrections and recommendations for related organizational and programme changes;
- That one women's facility have only female front-line workers;
- That a "Monitor" be appointed to report on the implementation of the cross-gender staffing policy;
- Amendments to policies to provide that in no case will males participate in or witness the strip-searching of women in CSC federally sentenced women's facilities;
- At each facility, CSC will have either an all-female IERT or an arrangement with outside police agencies to assist in maintaining security or restoring order;
- The review by the Department of Justice of how and what kind of effective sanctions can be devised which will be consistent with the effective management of the institutions;
- A Task Force on Administrative Segregation will visit all segregation units and enhanced units in the country and issue a report early 1997; and
- The launch by CSC of a comprehensive review of its policy framework. Where new policies must be enacted, CSC will ensure they are clear, realistic and that staff receive appropriate training in its application.

89. The following key recommendations have already been implemented or are being implemented:

- That the report be made public;
- That all inmates be given the right to counsel before consenting to body cavity searches;
- That federal women's institutions be designed so as to ensure privacy while using washrooms, dressing and undressing;
- That policy be developed at all women's facilities concerning crisis intervention and non-violent methods of intervention; and
- That all National Boards of Investigation include a member from outside the CSC.

Article 12

90. On 23 April 1993, the Canadian Forces commenced an inquiry into the Canadian deployment to Somalia following the March 1993 deaths of two Somalis in and around the Canadian

compound in Belet Huen, Somalia. A parallel investigation into the two deaths was conducted by military police assisted by a military medical officer (pathologist), a civilian forensic pathologist and a civilian police ballistics expert. As a result of these investigations, nine soldiers ranging in rank from private to lieutenant-colonel were charged with a variety of offences, including torture, and tried by general courts-martial. The courts-martial are discussed in further detail under article 2 of this report.

Article 13

General

91. The first report stated that a person may initiate criminal charges and proceedings before a justice pursuant to section 504 of the *Criminal Code* and may personally prosecute the offences subject to the right of the Attorney General to intervene and take charge of the prosecution. These proceedings may be initiated in addition to any complaints under disciplinary proceedings such as those discussed below.

(a) Royal Canadian Mounted Police

92. The second report noted that members of the public may submit a complaint regarding the on-duty conduct of RCMP officers to the Public Complaints Commission (PCC), an administrative body independent of the RCMP. The aim of this procedure is to ensure that members of the public will have their complaints fairly and impartially dealt with, and that in examining complaints, the public interest in the fair and proper enforcement of the law will be taken into account. Since April 1992, the PCC has held three hearings which dealt primarily with the issue of "excessive force", with two of these addressing the use of firearms.

(b) Correctional Service of Canada

93. On 1 November 1992, a new law, the *Corrections and Conditional Release Act* and regulations thereunder, came into force. This Act codified numerous policies and practices which were previously set out in Commissioner's Directives and brings these policies and practices in line with the *Canadian Charter of Rights and Freedoms*. The new law regulates all aspects of incarceration including transfers, isolation and searches. The legislation's purpose is identified in section 3 and includes not only carrying out sentences imposed by the courts but also assisting the rehabilitation of offenders and their reintegration into the community. Principles which guide the Correctional Service of Canada are set out in section 4 of the Act (see appendix GC-5).

94. The *Corrections and Conditional Release Act* indicates, in section 4 (e), that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence being served. The rights of inmates include the right to access to the grievance procedure of their institution, to make complaints to the correctional investigator, and the right to communicate confidentially with a lawyer.

95. Relevant Commissioner's Directives (attached in appendix GC-6) include:

- To ensure that inmate complaints and grievances are dealt with promptly (CD 081);
- To provide inmates with reasonable access to legal counsel and advice (CD 084);
- To regulate the use of force (CD 605);

- To ensure high standards of conduct for CSC employees (CD 060);
- To ensure adequate access to health services (CD 800); and
- To ensure consent to health services (CD 803).

96. The Act regulates the manner of detention, putting the emphasis on security, health and personal dignity. In keeping with Canada's obligations under the Convention, the Act clearly prohibits all cruel and unusual treatment or punishment, as well as the use of corporal punishment as a sanction.

97. Finally, the Act officially establishes the office of the Correctional Investigator of Canada, which was created in 1973 and acted under the aegis of the *Public Inquiries Act*. The Correctional Investigator is accountable to the Solicitor-General of Canada, who tables reports concerning inmates' grievances before the House of Commons.

Article 14

98. In the presentation of Canada's first and second reports, the Committee sought clarification about whether a victim is guaranteed compensation in cases where a perpetrator is acquitted due to lack of evidence. Generally, if a police investigation concludes that there has been no offence, there is no right to compensation. However, if the victim has reported the offence to the police, the victim may be entitled to compensation from the programme, if otherwise eligible, despite the fact that an offender is not apprehended, charged and/or convicted. It should be noted that such compensation provisions stem from special programmes established by provincial governments. As such, there is some variation between jurisdictions as to the compensation schemes. More information on criminal injuries compensation arrangements can be found in Canada's reports under the *International Covenant on Civil and Political Rights*. An injured party may also seek compensation or other remedies through the courts, even if the offender is a government official.

Article 16

99. As indicated in Canada's first report, the Supreme Court of Canada has found that the protection against cruel and unusual treatment or punishment in section 12 of the Charter is violated by conduct so excessive as to outrage standards of decency. In *R. v. Luxton*, the Court held that a mandatory sentence of life imprisonment with no parole eligibility for 25 years for first degree murder (i.e. planned and deliberate) did not infringe section 12 of the Charter. The mandatory sentence, according to the Court, was deservedly severe reflecting the fact that first degree murder is the most serious crime in the criminal law and encompasses the most serious level of blameworthiness.

100. In *R. v. Goltz*, the Court also held that section 12 was not violated by a mandatory seven day term of imprisonment for knowingly driving a motor vehicle while prohibited. Factors influencing the Court's conclusion were that the accused had "knowingly" to commit the offence, the need to protect public safety, and that the prior order prohibiting someone from driving was subject to numerous safeguards.

101. In the presentation of Canada's second report, the Committee inquired about section 43 of the Criminal Code and the legal status of corporal punishment in Canada. Section 43 of the *Criminal Code* provides a justification for the limited use of force by a parent, teacher or person acting in the place of a parent where that force is used for corrective purposes and is reasonable in all of the circumstances. It does not authorize the abuse of children. The standard to be applied in determining what is "reasonable" is that of the contemporary Canadian community. Case law has demonstrated that what was once a reasonable method of correction in Canada 10-20 years ago is likely no longer reasonable.

102. The issue of corporal punishment of children is also addressed in Canada by provincial/territorial child protection legislation which does not permit any form of child abuse. This legislation also usually addresses the issue of use of force by foster parents. Further, most provincial/territorial legislation relating to education prohibits the use of corporal punishment by teachers.

103. The Department of Justice has been monitoring section 43 of the *Criminal Code* as it does with all legislation falling within the Department's jurisdiction. This "review" is ongoing. The Department's review of corporal punishment has included, for example, the release of two papers on the issue: *Literature Review of Issues Related to the Use of Corrective Force Against Children* (by Nanci Burns, WD1993 June 1993); and *International Perspectives on Corporal Punishment Legislation: A Review of 12 Industrialized Countries* (by Nanci Burns, August 1992). The Department of Justice also contributed funding to a Health Canada project: Corporal Punishment: Research Review and Policy Recommendations (by Joan Durrant, Linda Rose-Krasnor; March 1995).

104. In May 1995, Canada presented its first report under the *Convention on the Rights of the Child*. Although the Committee on the Rights of the Child did not directly find that section 43 was in breach of the Convention, it recommended that Canada review section 43 and consider repealing it. No decisions have been taken yet by way of a response to the Committee's views.

Appendices

GC-1 *Canadian Charter of Rights and Freedoms.*

GC-2 The *Immigration Act*, R.S. 1985, c. I-2.

GC-3 *R. v. Brown* (1995), 5 C.M.A.R. 280.

GC-4 Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, The Honourable Louise Arbour, Commissioner, 1996.

GC-5 *Corrections and Conditional Release Act*, R. S. 1985, c. C-44.6.

GC-6 Correctional Service of Canada Commissioner's Directives:

- No. 081 – Inmate Complaints and Grievances
- No. 084 – Inmates Access to Legal Assistance
- No. 605 – Use of Force
- No. 060 – Code of Discipline
- No. 800 – Health Services
- No. 803 – Consent to Health Service Assessment, Treatment and Release of Information

III: MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES*

Newfoundland

Information on new measures and new developments relating to the implementation of the Convention

105. This report covers the period from 1 January 1992 to 31 May 1996.

Article 2

106. The responsibility for the delivery of Youth Correctional Services is now a shared jurisdiction between the Department of Justice and the Department of Social Services. The Department of Justice is responsible for secure custody services while the Department of Social Services provides all other services for young offenders including open custody (group homes, foster homes), community supervision (probation), alternative measures and the preparation of presentence reports.

107. Pursuant to the provisions of the *Fatalities Investigation Act*, S.N. 1995, c. C-30.1, if a death occurs in an institution, including all correctional institutions, a treatment facility or while a person is in the custody of the Director of Child Welfare or the custody of a peace officer, the medial examiner must investigate that death.

Article 10

108. The Royal Newfoundland Constabulary will be providing training for all members on officer safety and the use of force. This is to be an ongoing process in which officers will receive basic training and each year after will be given refresher courses.

109. The Royal Newfoundland Constabulary is in the process of developing a "Use of Force" continuum. This continuum will describe the nature of a complaint and the degree of force, if any, that would be applicable in a particular situation.

Articles 12 and 13

110. Under the authority of the *Fatalities Investigations Act*, if the Chief Medical Examiner deems it necessary for the protection of the public interest or in the interest of public safety, that an inquiry be held regarding one or more deaths that occurred under enumerated unusual circumstances or in a treatment facility or an institution, he or she may recommend to the Minister of Justice that a public inquiry be held. If the Minister is satisfied that an inquiry is necessary for the protection of the public interest or in the interest of public safety, the Minister may order that a Judge conduct an inquiry.

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* Georgaphical order, from east to west.

111. The *Royal Newfoundland Constabulary Act* was repealed and replaced with the *Royal Newfoundland Constabulary Act, 1992*. The new Act provides two avenues for the general public to address their concerns regarding conduct of members of the Royal Newfoundland Constabulary. The first is the Royal Newfoundland Constabulary Public Complaints Commission, which receives and investigates complaints made against members of the Royal Newfoundland Constabulary. This Commission is governed by legislation under the *Royal Newfoundland Constabulary Act, 1992* and the *Royal Newfoundland Constabulary Public Complaint Regulations, 1993.*

112. When a complaint is received by the Public Complaints Commission, the complaint is investigated by the Internal Review Section of the Royal Newfoundland Constabulary. The Chief of Police has the authority to either dismiss the complaint, take disciplinary action, or, with the agreement of all parties, settle the matter (informal resolutions). Either party can appeal the decision of the Chief of Police to the Public Complaints Commission. The Commissioner will investigate the complaint and attempt to effect a settlement, dismiss the complaint and confirm the decision to the Chief of Police or refer the matter to the Chief Adjudicator of the Panel appointed under the Act who will conduct a hearing into the matter and render an appropriate order. The Adjudicator's decision may be appealed to the Trial Division of the Supreme Court of Newfoundland.

113. If a person does not wish to follow the route of the Public Complaints Commission, they then can make a complaint against the officer and have the matter dealt with internally. The complaint will be investigated and the Chief of Police will decide if disciplinary action is warranted.

114. Numerous times, a person may not wish to take either of the two routes mentioned and just wish the matter be brought to the attention of the Chief of Police. When this occurs, the Royal Newfoundland Constabulary will launch its own investigation and take action if necessary.

115. The *Parliamentary Commissioner (Ombudsman) Act* has been repealed.

Article 14

116. The *Victims of Crime Services Act* came into force in 1988. The Act acknowledges the various needs of victims and states that victims should have access to social, legal, medical and mental health services that respond to their needs. The Act establishes the Victims of Crime Services Division of the Department of Justice.

117. The *Criminal Injuries Compensation Act* has been repealed.

Article 16

118. The *Child Welfare Act* was amended in 1992 to broaden the parameters around mandatory reporting of suspected ill treatment of children.

Additional information requested by the Committee

119. Attached as appendices NF-1 and NF-2 are tables which outline the nature of the complaints that have been brought against various members of the Royal Newfoundland Constabulary. These appendices also outline the number of complaints in each category as well as the outcome of each investigation.

120. There have been a number of complaints brought against correctional officers during the period under review with respect to excessive use of force. In all such cases, the inmate's complaint is referred to the local law enforcement agency to conduct an independent investigation. In 1995, there were two complaints and in 1996, there were six complaints.

121. There have been no convictions under the *Criminal Code* for excessive use of force against the Royal Newfoundland Constabulary or correctional officers. However, two correctional officers were convicted in 1996 of failing to provide the necessities of life when a prisoner died in custody. That conviction is being appealed.

122. The Royal Canadian Mounted Police advise that for the period of 1 January 1992 to 31 December 1994, six members were charged with assault. One of these charges was withdrawn by the Crown and three charges were dismissed for lack of evidence. One member was convicted of common assault and received a $200 fine. The second member was found not to have the authority to make an arrest and non-consensual physical contact was found to have occurred, therefore a finding of guilty was made on the charge of common assault. The Court disposed of the matter by way of absolute discharge. From 1 January 1995 to 31 December 1995, there were eight allegations of excessive or unnecessary use of force with all eight allegations found to have been unsupported by the evidence. In the first part of 1996, there was one allegation of excessive use of force investigated and a charge of assault under the *Criminal Code* was laid against one member. The matter is before the Courts.

APPENDIX NF-1

Complaints against Police, 1992

1992	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition
Force	–	–	–	–	–
Harassment	–	2	1	–	–
Assault	–	3	–	1	–
False arrest	–	5	–	–	–
Police abuse	–	2	1	–	–
Unlawful arrest and detention	–	2	–	–	–
Threats	8(1)B RNC Reg.	1			

Complaints against Police, 1993

1993	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition	Withdrawn	Informal resolution
Force	–	1	2	–	–	–	–
Harassment	3 verbal reprimand	–	3	–	–	3	1
Assault	1 reprimand	1	6	–	–	2	–
False arrest	–	1	1	–	–	–	–
Improper treatment	–	1	4	–	–	2	1
Unlawful arrest and detention	–	–	3	–	–	2	–
Threats by Police	–	–	1	–	–	1	–
Unlawful search	–	1	3	–	–	–	–

Complaints against Police, 1994

1994	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition	Withdrawn	Informal resolution
Force	1-RNC Reg.	3	6	1	–	3	–
Unlawful arrest and detention	–	–	–	1	–	–	–
Assault	–	1	–	–	–	–	–
	1 written reprimand						

Complaints against Police, 1995

1995	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition	Withdrawn	Informal resolution
Force	1 RNCA	5	2	–	–	1	–
Harassment	–	1	–	–	–	–	–
Assault	–	–	1	–	–	–	–
False arrest	–	–	2	–	–	–	–
Intimidation	1(3(1) RNC Reg.	–	1	–	–	–	–

Complaints against Police, 1996

1996	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition	Withdrawn	Informal resolution
Force	–	1	–	–	6	–	–
Harassment	–	–	–	–	–	–	–
Assault	–	–	1	–	–	–	–
Violation rights	–	1	1	–	–	–	–
False arrest	–	–	–	–	1	–	–
Discrimination	–	1	–	–	–	–	–
Illegal search	–	2	–	–	–	–	–
Extortion	–	1	–	–	–	–	–

Total complaints 1994 – July 1996

	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting disposition	Withdrawn	Informal resolution
Use of force	2	10	10	1	4	6	0
Harassment	1	3	4	–	3	–	1
Assault	1	5	8	1	2	–	–
False arrest	–	1	8	1	–	–	–
Police abuse	–	2	1	–	–	–	–
Unlawful arrest and detention	–	2	3	1	2	–	–
Threats by Police	1	1	1	–	1	–	–
Violation of rights	–	1	1	–	–	–	–
Improper treatment	–	1	4	–	2	–	1
Unlawful search	–	3	3	–	–	–	–
Intimidation	1	–	1	–	–	–	–
Illegal entry	1						
Extortion	–	1					
Discrimination	–	1					

APPENDIX NF-2

Total number of complaints
(Percentage breakdown of each complaint category)

Force	29.7%
Harassment	10.8%
Assault	15.3%
False arrest	9.0%
Police abuse	2.7%
Unlawful arrest and detention	1.2%
Threats by police	3.6%
Violation of rights	1.8%
Improper treatment	7.2%
Unlawful search	5.4%
Intimidation	1.8%
Extortion	0.9%
Discrimination	0.9%
Illegal entry	0.9%

PRINCE EDWARD ISLAND

123. The Government of Prince Edward Island reports that, in the period covered by the present report, no new developments occurred, which would add to the information already contained in previous reports.

NOVA SCOTIA

124. The period covered in this report is 1 April 1992 to 1 April 1996.

Article 2

125. The provincial Department of Justice enforces the provisions of the Canadian *Criminal Code* including section 269.1 which specifically categorizes torture as an indictable offence and eliminates the defence of superior orders.

126. The Nova Scotia *Hospitals Act*, R.S. 1989, c.208, states that if a peace officer apprehends and detains a person for a medical examination that may result in admission to a psychiatric facility, the officer must file a full report with the Attorney General within 24 of the apprehension. The person detained must receive the medical examination within 24 hours of admission and a person who is formally admitted can apply to have his or her declaration of capacity or competency reviewed by a review board.

127. In 1993, a patient representative position was created at the Nova Scotia Hospital, a psychiatric facility. The Patient Representative investigates complaints, assists with appeals and ensures that every ward has a poster outlining patient's rights. Since 1995, the information is also available on a video that is offered to every new patient. Hospital staff are monitored to ensure their compliance with this procedure. Major hospital committees that affect patient services are now structured to ensure that a patient (or a family member of a patient) sits as part of the committee.

Articles 6 and 7

128. The *Liberty of the Subject Act*, R.S. 1989, c.253, is the provincial *habeas corpus* legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of *habeas corpus* at common law and further guarantees that the remedy exists in full force and is the undoubted right of the people of this province.

Article 10

129. All provincial Corrections Officers receive a mandatory basic training course which includes an examination of the *Canadian Charter of Rights and Freedoms*. Since 1992, approximately 25 per cent of Corrections Officers have taken additional training in Verbal Crisis Intervention, a course designed to reduce physical intervention. The training is continuing to be offered to those officers who have not yet had the opportunity to take part. The Correctional Services program, taught at the community college level, is developing a programme Advisory Committee comprised of members from youth corrections, group homes, federal and provincial departments of Justice, and

university criminology departments. The programme teaches the *Canadian Charter of Rights and Freedoms* and the Nova Scotia *Human Rights Act*.

130. In March 1996, Nova Scotia became the first province in Canada to implement a province-wide Use of Force Policy. This policy is designed to reduce unnecessary force and injury to police or suspects and outlines the use of alternative tools to lethal force. Approximately 97 per cent of the province's peace officers have taken the two-day course associated with the policy; the course will be repeated on a yearly basis for all officers.

131. Throughout the period of this report, the province has been structuring an inter-agency "Critical Incident Investigation Task Force". The Task Force will be comprised of representatives from the Royal Canadian Mounted Police, municipal police, Military Police, the Department of Natural Resources, the Department of Fisheries and Ports Canada. The Task Force will investigate any death or serious injury caused by or to a peace officer. The investigation will be headed by an agency other than the agency involved in the incident; a public report will be issued.

Article 11

132. The *Corrections Act*, R.S. 1989, c. 103, provides for the safe custody and security of offenders and for inspection of lock-up facilities and compliance with prescribed standards.

Article 12

133. The *Fatal Inquiries Act*, R.S. 1989, c. 164, provides for an investigation into the cause and manner of the death of a person in a jail or prison, or other location where there is reasonable cause to suspect the person died by violence or culpable negligence.

Article 13

134. Under the *Police Act*, R.S. 1989, c. 348, the Nova Scotia Police Commission is authorized to investigate complaints against the police. Complaints that are not resolved by the Commission may be referred to the Review Board which must hold a public hearing and provide written reasons for its decisions. The Review Board may vary or affirm penalties against officers or award costs. In 1995, the Review Board conducted thirteen hearings. A total of 145 public complaints were received by the Commission in 1995; complaints for the first half of 1996 are down slightly.

135. In 1995, the Annual Report format was changed to specifically mention violations of the Nova Scotia *Human Rights Act* as a category of allegation; two such allegations were received in 1995.

136. In 1994, regulations made pursuant to the *Police Act* were amended to require municipal police departments to report internal disciplinary matters to the Police Commission. A total of 45 internal disciplinary matters were received by the Commission in 1995; the number has dropped markedly for the first half of 1996.

137. The Annual Report of the Nova Scotia Police Commission is made available through public libraries and the Nova Scotia government bookstore.

138. The *Ombudsman Act*, R.S. 1989, c. 327, authorizes staff from the Office of the Ombudsman to enter premises and investigate allegations of any offence against an inmate of a corrections facility or a patient in a psychiatric hospital. Where other avenues of redress exist, the staff may examine both whether the process and policy is fair and, if so, if the process was correctly followed.

139. In 1994, the Office of the Ombudsman began tallying Correctional Services complaints independently of those filed against the parent Department of Justice. In February 1996, the Office initiated a schedule of monthly visits to all youth correctional facilities and created a Registry of Complaints open to both inmates and non-management staff of those facilities.

Article 14

140. The *Fatal Injuries Act*, R.S. 1989, c. 163, provides for the right of family members to maintain an action and recover damages for a death caused by neglect or a wrongful act.

141. Under the *Proceedings Against the Crown Act*, R.S. 1989, c. 360, the government is subject to liability for torts committed by its agents and officers, including officers performing legal duties.

Article 16

142. In 1991, the Nova Scotia *Human Rights Act*, R.S. 1989, c. 214, was revised to state: "No person shall sexually harass an individual." In the period covered by this report, seven complaints of sexual harassment have proceeded to a full Board of Inquiry.

NEW BRUNSWICK

143. This report will outline changes made since the second report and provide additional information regarding New Brunswick's adherence to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It covers the period from 1 January 1992 to 31 December 1996.

144. New Brunswick is committed to the principles of the Convention against Torture and implementing fully its provisions within its jurisdiction.

Article 2

145. The *Custody and Detention of Young Persons Act*, R. S.N.B. 1973, c. C-40 recognizes and declares that young persons who commit offences have special needs and require guidance and assistance. They have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms*, and in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them. See *Custody and Detention of Young Persons Act* R. S.N.B. 1973 c. C-40 and *Regulation 92-71*, attached as appendices NB-1 and NB-2.

Article 10

146. There are two nursing schools in New Brunswick: the Faculty of Nursing at the University of New Brunswick, and *L'école des sciences infirmières* at l'Université de Moncton. The Faculty of Nursing has introduced specific content into its Year II curriculum dealing with the care of persons who have been subject to torture or other cruel, inhuman or degrading treatment. In Year II, III and IV of the programme, students work in a variety of community and tertiary care agencies where application of this knowledge is reinforced. *L'école des sciences infirmières* has, as part of its curriculum, training on the care of victims of physical and sexual abuse, regardless of the cause of the alleged abuse.

147. The New Brunswick Community College in Miramichi City, which runs the Correctional Techniques program, the Youth Care Workers program and the Criminal Justice program, has taken steps to implement education on the Convention against Torture into these three training areas. The content on the Convention has been added to the Correctional Operations course and the Youth Care Operations course, one of which must be studied by every student in the above-mentioned programmes. These operations courses contain specific content dealing with: "code of conduct" guidelines for correctional and youth care workers; the *Canadian Charter of Rights and Freedoms*, with specific reference to Section 12 on the legal right to not be subjected to cruel and unusual punishment; *Criminal Code* of Canada guidelines for the use of reasonable force and the *Correctional Jurisdiction Policy* on use of force guidelines and policies; discussions on topical or current incidents of torture and use of excessive force; workshops on harassment in relation to co-workers and clients in the criminal justice system; and specific discussions on and review of the Convention against Torture.

148. There is no training facility for police officers in New Brunswick. The regional training centre is Holland College, located in Charlottetown, Prince Edward Island, which also trains correctional officers. The training of police and correctional officers is consistent with the principles of the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* of Canada and the Convention against Torture, all of which are referred to in the course of the programmes. Training includes a significant emphasis on inmate rights, procedures for handling inmates, methods of restraint, consequences of the use of force, and non-force methods of discipline. Holland College is also involved with providing continuous on-the-job training.

Article 11

149. The Department of the Solicitor General conducted a study into the policing arrangements and policies in the Province of New Brunswick, with a view to formulating a rational basis for the modification of the existing arrangements. A report was prepared in 1992 which included several recommendations. See "Policing Arrangements in New Brunswick: 2000 and Beyond", attached as appendix NB-3.

150. A report was prepared in 1995 by a Commission of Inquiry established by Order-In-Council 92-1022 on the mistreatment of young people in the care and custody of the New Brunswick Training School. The Commission of Inquiry made several recommendations for the prevention of physical and sexual abuse of young people in care and custody. See "Report of a Commission of Inquiry Established by Order-In-Council 92-1022", attached as appendix NB-4.

151. A report was prepared by Jay Chalke in 1996 on a review of certain practices in New Brunswick correctional institutions. The terms of reference of the Review as established by the Solicitor General were:

(a) To examine current practices giving rise to the use of restraint and segregation of adult and young offenders in New Brunswick provincial correctional institutions in relation to acceptable national and international standards;

(b) To assess the appropriateness of restraint devices currently in use;

(c) To assess the adequacy of staff training as it pertains to the above practices;

(d) To assess the adequacy of internal and external mechanisms to monitor the use of restraint and segregation in order to ensure that abuses do not occur and that these practices are fair, humane and comply with legal standards including the *Canadian Charter of Rights and Freedoms*; and

(e) To present findings and, if appropriate, recommend changes to legislation, policy and practices, applicable to the New Brunswick Correctional System.

See "Review of Certain Practices in New Brunswick Correctional Institutions, Summary Report", attached as appendix NB-5.

Article 13

152. Amendments to the *Police Act* were recommended by the New Brunswick Police Commission, enacted by the Legislative Assembly and proclaimed effective 31 May 1996. These amendments empower the New Brunswick Police Commission to investigate directly, on its own motion, in response to a complaint, or at the request of a board or council any matter relating to any aspect of the policing of any area of the province. Under the former provisions of the *Police Act*, the Commission had to refer all complaints alleging misconduct by Regional or Municipal Police Officers to their respective police chiefs for investigation, raising ethical concerns about the practice of police investigating police. Under the amended Act, the Commission may refer a complaint related to the conduct of a member of a police force to the chief of police (so long as the chief is not the subject of the complaint), or investigate the complaint itself by appointing an investigator or conducting a hearing. The amendments also require chiefs of police to inform the Police Commission within 20 days of all complaints received. In the case where an investigation has been referred to a chief of police by the Commission, the chief must submit to the Commission the full details of the investigation within 20 days of its completion.

153. In June 1995, the membership of the New Brunswick Police Commission was enlarged to include both male and female representatives from various areas of the province. This larger Commission is better equipped to handle complaints and investigations.

Article 14

154. The Victim Services Program of the Department of the Solicitor General, Province of New Brunswick, provides the following services, free of charge, to victims and witnesses in a criminal case:

(a) Support for victims and witnesses;

(b) Information on how to prepare a victim impact statement; and

(c) Crime compensation for victims.

155. The *Victims Services Act*, R. S.N.B. 1973, c. V-2.1 establishes the Victims Services Committee which receives applications and submissions from any person, organization or institution relating to

(a) The needs and concerns of victims;

(b) The promotion and delivery of victims services;

(c) Research into victims services, needs and concerns;

(d) The distribution of information respecting victims services, needs and concerns; and

(e) The provision and funding for research and services relating to victims.

See the *Victims Services Act*, R. S.N.B. 1973, c. V-2.1 and *Regulation 96-81* attached as appendices NB-6 and NB-7.

156. The Department of the Solicitor General, Province of New Brunswick, prepares annual reports on *Compensation for Victims of Crime Act,* R. S.N.B. 1973, c. C-14. See reports for 1992-1993, 1993-1994, 1994-1995, and 1995-1996, attached as appendix NB-8.

Article 16

157. In 1992, sexual orientation was added as a ground of discrimination in the *Human Rights Act*, R. S.N.B. 1973, c. H-11.

Attached documents

NB-1 *Custody and Detention of Young Persons Act*, R. S.N.B. 1973, c. C-40.

NB-2 *Regulation 92-71* under the *Custody and Detention of Young Persons Act*.

NB-3 Policing Arrangements in New Brunswick: 2000 and Beyond.

NB-4 Report of a Commission of Inquiry Established by Order-In-Council 92-1022.

NB-5 Review of Certain Practices in New Brunswick Correctional Institutions, Summary Report.

NB-6 *Victims Services Act*, R. S.N.B. 1973, c. V-2. 1.

NB-7 *Regulation 96-81* under the *Victims Services Act*.

NB-8 Co.npensation for Victims of Crime Act Reports for 1992-1993, 1993-1994, 1994-1995, and 1995-1996.

NB-9 Details and dispositions of citizen's complaints made against New Brunswick Police, 1991-1996. From the New Brunswick Police Commission's Annual Reports, 1992-1996.

NB-10 Complaints made against the New Brunswick RCMP, 1992-1997. From the RCNP Public Complaints Commission's 1996-1997 Annual Report.

APPENDIX NB-9

Details and dispositions of citizens' complaints made against the New Brunswick Police Force 1991-1996

Type of classification	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996
Improper conduct	8	18	14	14	19
Neglect of duty	12	12	19	7	12
Abuse of authority	10	10	16	12	25
Other	2	0	1	0	8
TOTAL	**32**	**40**	**50**	**33**	**64**

Disposition of complaints	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996
Founded	1	5	6	3	3
Unsubstantiated (Evidence to prove or disprove not produced)	1	8	4	2	3
Unfounded	24	21	32	26	39
Under investigation	5	3	7	1	6
Withdrawn or discontinued	1	2	1	1	4
Civil matter	–	–	–	–	2
Closed	–	–	–	–	7
TOTAL	**32**	**40**	**50**	**33**	**64**

Source: Annual Reports 1992-1993, 1993-1994, 1994-1995 and 1995-1996 of the New Brunswick Police Commission.

APPENDIX NB-10

Complaints made against the New Brunswick
RCMP 1992-1997

Table 1
Numbers of complaints made against New Brunswick RCMP, 1992-1997

	1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	TOTAL
Complaints made directly to the Commission	26	15	19	18	25	**103**
Complaints made to the RCMP	–	–	210	178	161	**549**
Complaints referred to the commission for review	9	15	7	6	8	**45**
TOTAL	**35**	**30**	**236**	**202**	**194**	**697**

Source: Annual Report 1996-1997 of the RCMP Public Complaints Commission, Appendix A, Tables 1, 2 and 6.

Table 2

Categories of allegations found in complaints against the New Brunswick RCMP Received by the Commission, 1996-1997

ALLEGATIONS	NUMBER OF COMPLAINTS
Improper attitude	3
Improper use of force	2
Improper use of firearms	0
Irregularity in procedure	1
Driving irregularity	0
Neglect of duty	19
Statutory offences	0
Mishandling of property	1
Irregularity – Evidence	0
Oppressive conduct	16
Improper arrest	0
Improper search of persons or vehicles	0
Improper search of premises	2
Policy	2
Equipment	0
Service	5
Other	0
TOTAL	**51**

Source: Annual Report 1996-1997 of the RCMP Public Complaints Commission Appendix A, Table 4.

QUÉBEC

158. The Government of Québec declared itself bound with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with the adoption, on 10 June 1987, of decree No. 912-87, in compliance with its internal law.

159. Unless otherwise indicated, this report updates to 31 December 1995 the information contained in the second report of Canada on the application of this Convention.

Article 2

160. According to Québec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, enacted by the National Assembly in 1975, "every human has a right to life, and to personal security, inviolability and freedom." Legislative and administrative measures have been taken on the basis of this fundamental provision, to ensure compliance with the Convention.

161. Under the *Act respecting police organization*, R.S.Q., c. O-8.1, all special constables and police officers in Québec are subject to the same rules of conduct, as prescribed by the Québec police code of ethics. Two separate independent tribunals – the Police Ethics Commissioner and the Police Ethics Committee – monitor compliance with this code and handle public complaints against police conduct, each at their own level.

162. The *Act respecting health services and social services*, R.S.Q., c. S-5, provides for a series of measures to protect the rights of users in dealings with health-care and social-services institutions in Québec. Institutions had to establish a code of ethics and a users committee. In addition, a complaint processing mechanism was set up at the local, regional and provincial levels. The overall purpose is to ensure respect for human rights and increased humanization of relations between persons requiring services and the overall system which provides them.

Article 3

163. Cases of deportation, extradition and rejection of persons in detention facilities are reviewed and their fate is decided by federal authorities.

Article 4

164. The *Criminal Code* (section 269.1) prohibits torture of a citizen by a public official. Only one citizen invoked this provision during the period covered. Accusations were made against three peace officers by this person. The judicial process provided for in such cases resulted in the acquittal of the three defendants.

Article 10

165. Training of new police officers takes place at the *Institut de police*. During their training, all trainees are evaluated on their skills and their ability to put their professional knowledge into practice while respecting fundamental human rights at all stages of police operations – arrest, detention, incarceration, search and investigation. Training given on the use of force is based on the practical and technical aspects of police work in a legislative and regulatory context, in keeping with the legal guarantees enshrined in the Canadian and Québec charters of rights and freedoms.

166. Over the past few years, training sessions have been held on physical intervention used by correctional officers in order to minimize the risk of injuries during altercations. All provincial institutions have taken advantage of this training and new correctional officers have received several hours of training centred on respect for human rights and freedoms.

167. The Department of Education also makes a significant contribution in the training of various employees. The following information is updated to 31 May 1996.

168. University and scientific affairs sector. In light of the rule of independence of universities, whereby they are responsible for the content of training programmes and changes made to them, the Department of Education sent a letter to universities involved in medical training, informing them of the Québec government's adherence to the Convention and its impact on their training programmes. The Department thus asked institutions to take into account Québec's commitments in this regard.

169. College vocational and technical training sector. Training programmes for nursing staff and police officers include the following objectives:

(a) **Police technology**: to identify the roles and responsibilities of the police within the Québec legal system; to apply knowledge related to police organizations, ethics and discipline; to exercise police authority and duties in criminal cases and in relation to Québec legislation and municipal by-laws; and to apply intervention techniques with persons in crisis situations;

(b) **Health, assistance and nursing care**: to identify one's role in relation to the profession and training efforts; and to acquire knowledge on legislation and professional ethics;

(c) **Nursing**: to show respect for human dignity and value in accordance with principles of ethics and conduct; to carry out one's professional duties in compliance with the requirements of an explicit concept of nursing; to exercise the nursing profession, ensuring respect for care, in accordance with one's professional responsibilities; and to show a social commitment in terms of one's professional skills.

170. To achieve the training objectives, students must become familiar with certain Acts and regulations that determine their rights and duties and the parameters of their field of professional practice. For example, students preparing to become nurses or nursing assistants must become familiar with the content of the *Code of ethics of nursing assistants*, R.S.Q., c. C-26, r. 111, particularly with the duties and obligations of nurses and nursing assistants toward the public, the patients and the profession, and discuss the consequences of failing to fulfil the duties and obligations contained in the code of ethics and the means of protecting oneself against potential lawsuits.

171. At the end of their training period, graduates must meet either the requirements of the *By-law respecting standards of the Sûreté du Québec and municipal police forces for the hiring of constables and cadets*, R.S.Q., c. P.-13, r. 14, enacted under the *Police Act*, R.S.Q., c. P-13, or the requirements of Québec's *Nurses Act*, R.S.Q., c. I-8, to obtain their licence.

172. Finally, the training plans for all the programmes in the health sector are developed in cooperation with the Department of Health and Social Services. Respect for human rights and conditions of professional practice are included in the training plans.

Article 11

173. With regard to policing, in addition to enforcing the policy of having another police force investigate any death occurring during a police operation, the Department of Public Security has implemented various measures, in terms of custody and treatment, to ensure that the rights of persons arrested, detained or incarcerated are respected:

(a) Preparation of a manual of police practices, ensuring compliance with the *Charter of Human Rights and Freedoms* and promoting standardization of police practices throughout Québec.

Among other things, this manual outlines guidelines or standards on the use of force, arrests and detention and investigation techniques;

(b) Creation of *L'informateur juridique*, a specialized journal which reviews recently adopted police practices, provides information on the various legislative changes and discusses sociological trends and social problems affecting police work;

(c) Introduction of news bulletins to police chiefs to provide a rapid, flexible communication tool, with objectives similar to those of *L'informateur juridique* and the manual of police practices but on an ad hoc basis;

(d) Participation of the security and prevention branch and police forces in various working groups on such topics as implementation by police organizations of concrete protection and security measures for victims in cases of spousal abuse; evaluation and review of police physical intervention techniques; screening of volunteers to prevent persons at risk from being in a position to sexually assault children or other vulnerable persons; monitoring of training programmes at Québec's *Institut de police*; and finally, private security to ensure, among other things, that this industry's procedures comply with the *Charter of Human Rights and Freedoms*.

174. With regard to corrections, in 1994-1995, 91,553 entries were registered in the detention facilities system. Of this number, 65,338 were admissions and 26,215 were transfers. Thus, the average daily registered population was 6,096 persons, or 1,268 accused and 4,828 inmates, including an average of 3,553 persons on temporary absence from the detention centre.

175. The correctional system has adopted a new approach designed to reduce the number of admissions to detention facilities by using other measures, such as suspended sentences, driver's licence suspensions and increased recourse to community service and the work option. Incarceration has thus truly become a measure of last resort. Amendments to the *Code of Penal Procedure*, R.S.Q., c. C-25.1, and the *Criminal Code* have facilitated the implementation of this new practice, which is combined with a desire to meet the specific needs of the regions. To this end, regional branches have been set up to provide services tailored to the particular clientele in each region in Québec.

176. Finally, decisions made by correctional authorities are closely monitored by independent organizations such as the *Protecteur du citoyen* [ombudsman] and the *Commission des droits de la personne* [human rights commission], which became the *Commission des droits de la personne et des droits de la jeunesse* [human rights and youth rights commission] on 29 November 1995. Inmates' access to them is strictly confidential. In addition, these two agencies closely monitor the management of Québec detention facilities and frequently intervene. For example, in conjunction with Correctional Services, the *Protecteur du citoyen* helped prepare a directive, soon to be in force, on the use of constraint and restraint measures.

Articles 13 and 14

177. With regard to the work of police officers, any citizen who feels his or her rights have been infringed or that he/she has been improperly treated can file a complaint with the Police Ethics Commissioner. The procedure followed in such cases and the powers of the Police Ethics Commissioner and the Police Ethics Committee were outlined in paragraphs 87 to 90 in the second report of Canada.

178. The office of the Police Ethics Commissioner receives an average of 1,100 complaints annually, implicating some 1,500 police officers, or about 10 per cent of the total special constable and police ranks.

179. Since the Commissioner does not have the authority to rule and decide on the validity of the complaints he receives, a role assigned to the Police Ethics Committee, he exercises his authority in terms of the powers conferred on him, as shown by the data for 1995-1996. The Commissioner thus refused to investigate 266 complaints (28 per cent), attempted to reconcile the parties in 130 cases (15 per cent), and decided to investigate in 605 cases (63 per cent). Following investigation, the Commissioner decided to summon officers to appear before the Committee in 207 cases involving 289 police officers.

180. In compliance with the system for supervising and monitoring police duties, the Commissioner laid charges of 264 counts of excessive use of force by police officers under a specific provision in the police code of ethics. After hearing the parties, the Police Ethics Committee recognized excessive use in the case of 40 police officers.

181. Persons who claim to have been mistreated by Correctional Services may file a complaint before the civil or criminal courts and, if the evidence so justifies, be compensated for the harm suffered or even obtain a conviction against the attacker. Thus far, no proceedings have been instituted against any employees working in detention facilities for torture or other cruel, inhuman or degrading acts.

Article 16

182. During its tenth session, the Committee against Torture asked for details to be provided in Canada's next report on the issue of corporal punishment in Canada, particularly with regard to children.

183. The *Criminal Code* (section 43) authorizes persons facing criminal charges to claim as a defence that, as a schoolteacher or parent, they used reasonable force to correct a pupil or child.

184. During the period covered, the Québec Court of Appeal ruled on two occasions on the impact of this section on the decisions in *Fonder v. R.* on 9 February 1993, and *Bouillon v. R.* on 17 April 17. In both cases, the appeals of the respondents were allowed and they were granted the defence provided for in section 43. The cases involved two teachers accused of committing assault (Bouillon) and aggravated assault (Fonder). The Court of Appeal allowed these defences, pointing out that it was a question of benign assault, with no real criminal intent, in order to enable a teacher to regain control in a classroom.

185. It should be noted that the adoption of Québec's new civil code late in 1991 put an end to the former rule of law whereby parents had the right to correct children with moderation and within reason. The general rule now relates to parents' rights and duties of custody, supervision and education of their children.

ONTARIO

186. The information provided here is an update of Canada's second report on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It covers the period from 1 January 1992 to 31 May, 1996.

187. Torture is a criminal offence and Ontario is dedicated to strong and effective law enforcement.

188. Ontario's correctional system is going through an extensive change that will fundamentally alter the way in which services are delivered to inmates. These changes have been implemented with a focus on re-balancing the corrections system to reflect the rights of victims and to institute a meaningful consequence for offenders. To this end, the government is currently in the process of replacing its aging adult facilities with modern, more humane institutions. As well, a strict discipline project, aimed at reducing recidivism and specifically tailored to 16- and 17-year-old male repeat offenders, is currently under way. A structured programme regimen emphasizing work skills and education has also been established throughout the young offender system.

189. Ontario is committed to ensuring that public safety is the highest priority in inmate release decisions. Strengthened parole policies, vigorous enforcement of the terms and conditions of parole, and a reduction in the parole grant rate have been effective changes in maintaining public security. Change within the corrections system is also being delivered through a large capital renewal project that will eliminate economic inefficiencies and halt the structural deterioration of the province's correctional facilities.

Article 1

Ontario Human Rights Commission

190. On 21 May 1996, the Ontario Human Rights Commission released its policy on Female Genital Mutilation (FGM). It is the Commission's position that the practice of FGM is contrary to public policy in Ontario because it offends the inherent dignity of women and girl children and infringes their rights as set out in the Ontario *Human Rights Code*. The Commission will, therefore, accept, investigate, and make a determination on complaints involving female genital mutilation filed by victims of the practice or their legal guardian.

Article 2

Ministry of the Solicitor General and Ministry of Correctional Services

191. To prevent acts of mistreatment in Ontario's correctional facilities, the Ministry monitors its compliance with relevant statutes, regulations, policies, procedures, training and standards.

Article 10

Ministry of Community and Social Services

192. All staff are trained in the requirements pertaining to the use of force on clients, as set out in the Ministry's Young Offender Services Manual. These requirements cover the following key areas: use of physical or mechanical restraints; use of secure isolation; maintenance of discipline; control of contraband; use of searches; apprehension of youth; and use of punishment.

Ministry of the Solicitor General and Ministry of Correctional Services

193. Supervision of the detention and release of inmates, parolees, probationers and young offenders is designed to effect a change in the attitudes of those individuals in order to prevent re-offending. All correctional officers receive basic and advanced training in order that they may appropriately carry out their tasks. This training includes education and information regarding the prohibition against mistreatment in a correctional setting. All correctional staff are given education and training in relevant statutes and regulations, security protocols, principles of ethics, the proper use of force and the effective use of non-physical intervention and communications.

Article 11

Ministry of Community and Social Services

194. All youth in the Ministry of Community and Social Services young offender facilities come under the jurisdiction of the *Child and Family Services Act* which sets out rights and protections for children, including:

- The right to speak in private and receive visits from his/her solicitor or another person representing the child;
- Controls on the use of secure isolation; and
- Regular advice to children regarding their rights.

195. Compliance review mechanisms ensure that standards set out in the Young Offender Services Manual regarding rights, complaint procedures, serious occurrence reports, child abuse, use of punishment, searches, mechanical restraints and mandatory criminal reference checks for staff are adhered to.

Ministry of the Solicitor General and Ministry of Correctional Services

196. Consistent with the purpose of article 11, to prevent cases of mistreatment of persons in custody, the Ministry has established standards for correctional staff, facilities and inmates. These include ethical standards for correctional staff; policies regarding conditions of confinement (e.g. accommodation, programmes and health care); and principles governing confinement (inmate rights and privileges, responsibilities, and penalties for non-compliance).

197. In setting standards for inmates, the Ministry's emphasis is on supervision that will lead to a change in their behaviour. The Ministry has recently begun a pilot of a strict discipline programme for young offenders. The programme emphasizes work/study habits and minimizes free/recreational time in order to help young offenders understand their responsibilities to society as a whole. Ontario continues to call upon the federal Government to make substantive amendments to the *Young Offenders Act* in order to provide for appropriate courses of action that match the crime.

Articles 12 and 13

Ministry of Community and Social Services

198. The ministry's serious occurrence procedures require that all serious occurrences involving children must be reported to the Ministry within 24 hours, including serious injuries and allegations of abuse.

Ministry of the Solicitor General and Ministry of Correctional Services

199. There are mechanisms in place to ensure that persons within the Ministry's area of jurisdiction have a right and a means to complain about physical abuse by Ministry employees, and to ensure a prompt and impartial investigation into reasonable grounds for or allegations of mistreatment by such persons.

200. All correspondence, with the exception of letters to or from the Office of the Ombudsman, the Information and Privacy Commissioner and the Correctional Investigator of Canada, may be examined for contraband or inappropriate content. However, inmate correspondence is examined only by specially designated personnel on a "spot check" basis in order to check for information or items that might constitute a breach of law or be prejudicial to the security of the institution or the best interests of inmates or other persons. Correspondence that is examined is then forwarded without delay and without changes.

201. Investigations by the Ombudsman and by Human Rights Commissions are independent.

Article 16

Ministry of Community and Social Services

202. Under the *Child and Family Services Act*, every service provider is required to maintain an up-to-date written statement of policies and procedures that set out methods of maintaining discipline and procedures governing punishment and isolation methods that may be used in the residence. No service provider is permitted to use deliberately harsh or degrading measures to humiliate a resident or undermine a resident's self-respect.

Ministry of the Solicitor General and Ministry of Correctional Services

203. In order to prevent acts of cruel, inhuman or degrading treatment or punishment in provincial correctional facilities, the Ministry monitors compliance with relevant statutes, regulations, policies and procedures, and training and standards regarding the proper use of force and the effective use of non-physical intervention and communications.

MANITOBA

204. This report updates the information contained in the second report of Canada on the application of this Convention, with respect to developments in Manitoba up to 1 August 1996.

Article 2

205. Manitoba previously reported on the enactment of *The Corrections Act*, and the regulation making authority with respect to conduct and duties of officers and employees of correctional institutions, staff training and so forth. In 1992, a comprehensive regulation was enacted under this Act, *Regulation 227/92*, to provide a detailed and systematic process with respect to inmate discipline, including an appeal process for inmates. This regulatory process continues to be under review, with amendments being made when required.

Article 10

206. In the first report, Manitoba referred to the role of the Manitoba Police Commission. Amendments to *The Provincial Police Act*, C.C.S.M. Cap P150 in 1992 abolished the Police Commission. Its role with respect to liaising with, and advising, provincial police departments is performed by the Law Enforcement Branch, Manitoba Justice. Its appellate functions under *The Provincial Police Act* have been transferred to a judge of the Provincial Court of Manitoba (see also article 13).

207. Police in Manitoba do receive training with respect to the custody, interrogation or treatment of individuals subject to any form of arrest, detention or imprisonment, including in the context of the requirements of the *Canadian Charter of Rights and Freedoms*. The Winnipeg Police Service, the largest municipal force in the province (approximately 60 per cent of Manitobans live in Winnipeg), provides extensive training in this regard, including standardized "justified force" training designed to ensure that its members can analyse the risks inherent in any law enforcement situation, and will apply no more than a reasonable amount of force under the circumstances. This training programme is based, amongst other things, upon a continuous study of the emerging case law on the subject. Not only is it a major component of each recruiting class, but every member of the Winnipeg Police Service is expected to engage in in-service training, and to qualify annually on the subject.

208. The Winnipeg Police Service makes places available in both the recruiting classes and in-service programming for members of the smaller Manitoba municipal police forces (who otherwise would not have the ability to provide such programming). The Royal Canadian Mounted Police, which handles most rural policing in Manitoba under contract, is federally regulated. Its members receive extensive training along similar lines.

Article 13

209. *The Law Enforcement Review Act*, C.C.S.M. Cap L75, the role of which was described in Manitoba's first report, was amended in 1992. It remains the primary vehicle for members of the public to complain about conduct by all police officers in Manitoba (except the Royal Canadian Mounted Police, which has its own public complaint process under federal law). The Act originally imposed as a standard of proof upon a complainant the requirement that the complaint be established "beyond a reasonable doubt". This was considered a major barrier to complainants' successfully bringing forward complaints about questionable police behaviour, so the standard of proof was lowered to "clear and convincing evidence that the [police officer] has committed the disciplinary default". This was in accordance with the standard used in some other provinces, and was recommended by the Aboriginal Justice Inquiry.

210. In addition, with the abolition of the Manitoba Police Commission, which had previously exercised an appellant function when the Law Enforcement Review Commissioner dismissed a complaint under section 13, this appellate function was transferred to a judge of the Provincial Court of Manitoba, sitting *persona designata*.

Article 14

211. There have been minor administrative/policy, but no substantive, changes to *The Criminal Injuries Compensation Act*, C.C.S.M. Cap C305. Funding levels were slightly increased during the reporting period.

Article 16

212. Prior reports omitted reference to Manitoba's Child Abuse Registry. Where conduct prohibited by this Convention amounts to abuse as defined in *The Child and Family Services Act*, C.C.S.M. Cap. C80, the perpetrator may have his/her name entered on the Registry, which is then accessible by prospective employers, service providers and so forth. (Registration is automatic in the event of a conviction for an abuse-related offence on a child, and there is also a procedure for registration – subject to an appeal or review process – even without a conviction).

SASKATCHEWAN

213. This report updates to 1 August 1996 the information contained in Canada's two previous reports on the Convention relative to Saskatchewan.

Article 10

Use of force

214. The Corrections Division has developed a number of policies related to staff use of force in routine and extraordinary situations, and all institutional staff are trained and made fully aware of these policies. These policies have been developed to be fully compatible with the provisions of the *Criminal Code*. The policies include:

- Use of Force;
- Use of Force (Exceptional Measures);
- Management of Hostage/Crisis Situations in Provincial Correctional Facilities;
- Strip Search of Visitors;
- Use of Physical Restraints in Provincial Correctional Centres; and
- Inmate Discipline.

Article 13

Corrections

215. The policies of the Corrections Division provide offenders with a clear system for review and remedy of a complaint. These policies ensure that any allegation of staff assault/abuse of an offender is referred to the police for an independent and impartial investigation. As well, an offender may initiate an investigation of an alleged assault through direct complaint to the police. A further avenue of review is provided through the Provincial Ombudsman Office. The relevant policies are:

- Police Investigations of Assault Incidents in Correctional Facilities;
- Censorship Policy;
- Inmate Telephone Calls to Provincial Ombudsman; and
- Internal Reviews of Inmate Complaints in Provincial Correctional Centres.

Young offenders in custody

216. In March 1991, the Department of Social Services established a policy that limited the use of physical restraints on youth held in custody. The practice of one-to-one supervision of residents in custody facilities for additional supervision, support or security has reduced the use of physical confinement and restraint.

217. In 1994 and 1995, satellite programmes for secure custody were developed to reduce the harmful effects of overcrowding in custody facilities. In March 1996, community-based resources allowed the Department to discontinue its use of a substandard holding area in an open custody/family services facility.

218. In order more appropriately to assist youth in custody, a sex-offender treatment programme was developed in one secure custody facility and in one community-based open custody facility, and community-based treatment group homes were developed for youth who would otherwise have been placed in a large centralized facility that was not in close vicinity to the youth's home community.

Children in the care of the province

219. Policy and procedures have been developed with the Saskatchewan Foster Families Association to investigate allegations of abuse or neglect involving children in foster homes who are in the care of the Minister of Social Services.

220. Systemic reviews of services for children will be done through a quality improvement function within the Department of Social Services. These reviews will include consultation with clients. As part of this direction, pamphlets are being developed for children and youth in the care of the Minister of Social Services and for youth residents in custody facilities to inform them of their rights.

221. A child death policy has been developed to outline a department's response to handling situations where children may have died while receiving services from the Department.

222. The Office of the Children's Advocate was established in November 1994. The role of the Advocate is to protect the interests of children and youth receiving services from the Government and requiring advocacy services. The Children's Advocate is independent of any Government department and was appointed for a five-year term on recommendation of the Legislative Assembly. The Office of the Children's Advocate is associated with the Office of the Ombudsman.

223. The mandate for the Advocate is to provide:

(a) A proactive response to individual children and youth in crisis;

(b) Systemic reviews for children and youth receiving government services;

(c) A problem-solving approach emphasizing mediation and negotiation; and

(d) Public education on the needs and well-being of children.

Article 16

Health care

224. Section 6, Part II, of the *Regulations* to *The Housing and Special Care Homes Act* requires that the appearance of residents in housing and special care homes show evidence of adequate care, including evidence of kind and considerate care. This section also states that restraints should only be used in an emergency and on the order of the physician.

225. A coordinated district-wide approach to responding to client complaints has been implemented to improve communication and collaboration among health district residents, health care providers, professional groups, boards, districts and Saskatchewan Health to improve service delivery at the district level. The quality of care coordinator in each district is to develop a consistent approach to: (a) receiving and responding to complaints; (b) assisting individuals and families with questions or concerns about health services in their districts; (c) assisting in matching individuals with appropriate services; and (d) using the experience of residents to improve the quality of services delivered in the district through development and implementation of policies, procedures and mechanisms to improve the districts health services.

ALBERTA

Part I

The role of the provincial Ombudsman

226. Under the terms of the *Ombudsman Act*, the Ombudsman may investigate complaints of the administrative actions of provincial government departments and agencies. People in provincial correctional institutions are guaranteed access to the Ombudsman. People living in provincial institutions also have the right to complain to the Ombudsman, except for those in mental hospitals who may contact the Mental Health Patient Advocate. The Ombudsman may also initiate his own inquiries. With minor exceptions, he is guaranteed free access to all provincial government facilities and files. At the end of an investigation, the Ombudsman may recommend changes or, if unable to effect change, make his concerns public. Police are not directly under the Ombudsman's jurisdiction,

but the disposition of complaints about police operating through provincial authority may be appealed to the Law Enforcement Review Board. The actions of the Law Enforcement Review Board can be investigated by the Ombudsman.

Articles 10 through 16

227. Police services in Alberta and the Staff College of the Alberta government provide training to police officers and special constables which clearly defines the limits of force which can be used by an officer. Most of the police services in Alberta (Edmonton, Calgary, Medicine Hat, Lethbridge, and the Aboriginal Police Services) are trained using the Police S.A.F.E.T.Y. System and its Use of Force Model which identifies the level of force to be used against the level of aggression. Under this system, 50 hours of training is provided to new recruits and refresher training is provided as required by policy, ensuring that new control techniques such as pepper spray are used properly and appropriately. Training based on the Criminal Code of Canada and the *Canadian Charter of Rights and Freedoms* is also provided. Each police or special constable service is required to have policies and procedures in place which govern their employees' behaviours. It is also the responsibility of these employers to monitor their staff.

228. Persons who allege to be victims of police can bring their complaint to the police service and can also appeal the disposition of their complaint at that level to the Law Enforcement Review Board, an independent quasi-judicial body established under the *Alberta Police Act*.

229. The Correctional Services Division of Alberta Justice has a considerable number of policies that reinforce the need to treat the incarcerated offenders equitably. Policies include appeal mechanisms to correctional and third-party officials, and reviews of staff decisions by senior correctional staff. Training initiatives are predicated on policy directives. All new and incumbent staff receive complete training on all aspects of policy, including approved security and disciplinary methods, offender management techniques, conflict resolution and protections available to offenders.

230. Provisions of the *Mental Health Act* (1990) and the *Public Health Act* as reported by Alberta in the second report on this Convention remain in effect.

231. Article 12 of the Convention indicates that Canada must ensure that competent authorities proceed to prompt investigation wherever there is reasonable ground to believe that an act of torture has been committed in Canada. Within the province of Alberta the *Fatality Inquiries Act* requires that any death resulting from a violent act, or any death which is thought to be a result of negligence, must be investigated by a Medical Examiner. This investigation includes determination of the identity of the decedent, the place of death, the time of death, the medical cause of death, and the manner of death (i.e. natural, homicide, suicide, or accident). Although the Medical Examiner's Office falls under the jurisdiction of the Department of Justice, the final conclusions rendered by the Medical Examiner in any case are solely those of the Medical Examiner, and are made independently of the government and police. Therefore, any death alleged to have been a result of torture or other cruel, inhuman or degrading treatment or punishment would be investigated by the Medical Examiner's Office, and a report prepared as to the cause and manner of death. Furthermore, the provisions of the *Fatality Inquiries Act* stipulate that all deaths in custody and those deaths recommended by the Fatality Review Board must go to public inquiry wherein the circumstances surrounding a death are made public before a provincial court judge. The judge can make recommendations for preventing similar deaths in the future. Under the Medical Examiner system, any death alleged to have been caused by torture or other cruel, inhuman or degrading treatment or punishment would go to public inquiry.

232. The Crimes Compensation Board was established by the government of Alberta to provide help for victims of violent crimes. The Board is made up of three members appointed by the government of Alberta. The Board reviews an application for compensation and holds a hearing with the applicant. Compensation may be made for injuries suffered directly from a violent crime, while making or assisting in an arrest, while preventing the commission of a crime, or for the dependants of anyone killed under the previous circumstances. The type of claims allowed are: wages or salary lost because of injury; medical and dental expenses; damaged clothing or eyeglasses; funeral expenses; maintenance of children born as the result of a rape; and transportation expenses and loss of earnings as a result of attendance at a Board hearing. Property damage may also be covered if it is caused by a peace officer while preventing an offence or arresting a suspect.

233. No complaints have been received by either the Law Enforcement Review Board or the Crimes Compensation Board regarding the use of torture or other cruel, inhuman or degrading treatment or punishment.

234. Effective 1 September 1991, the use of physical discipline in Alberta's foster homes was severely limited. All foster parents received training in the use of alternative forms of child management. Effective 1 January 1993, the use of physical discipline in Alberta's foster homes was prohibited. New foster parent applicants are not approved unless they agree to comply with the "no physical discipline" policy. Training in the use of alternative forms of child management continues to be mandatory.

Part II

Education

235. Section 15 of the *School Act* reads as follows: "A principal of a school must ... (e) maintain order and discipline in the school and on the school grounds and during activities sponsored or approved by the board;".

236. Section 13 of the same Act reads: "A teacher while providing instruction or supervision must ... (f) maintain, under the direction of the principal, order and discipline among the students while they are in the school or on the school grounds and while they are attending or participating in activities sponsored or approved by the board;".

237. The use of corporal punishment to correct student behaviour is set by school board policy. The majority of Alberta school boards have banned corporal punishment in their policies.

238. Section 43 of the *Criminal Code* protects persons in authority and allows the correction of a child by force. This section provides teachers with the ability to use force by way of correction. The section states, "every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable in the circumstances".

239. Amendments to the *School Act* (May 1994) increased the power of schools to expel or suspend a student for a variety of specific reasons or for any other reason that the teacher, the principal or the school board considers appropriate. The amendment includes specific processes that recognize the right of the student to fair and just treatment, including the right of appeal to the school board and to the Minister.

240. Alberta Education has provided leadership on strategies and projects to improve student conduct in schools, reduce violence and promote the peaceful resolution of conflict in schools and communities. Schools help all students to learn and handle conflict and anger in non-violent ways and prepare for the responsibilities of citizenship.

Health

241. A research report was produced, entitled *The Case for Culturally Sensitive Health Care: A Comparative Study of Health Beliefs Related to Culture in Six North-East Calgary Communities*, which captures, for the first time, a quantitative as well as qualitative look at the extent and need for understanding and including cultural beliefs in the relationship between health practitioners and patients/clients. This study of almost 400 families in Calgary and a parallel study of 45 health practitioners found that cultural factors are critical in the care of one out of three patients, and suggests ways that practitioners might develop strategies to include cuiturally-sensitive health care in their training and professional development.

242. A managing diversity organizational change process was initiated in partnership with Calgary Health Services (CHS) in 1992. The organizational assessment, called *Keys to Integrating Cultural Diversity with Public Health: An Analysis of Barriers*, was completed in early 1994. A strategic implementation plan was approved in April 1994. An ongoing Managing Diversity Committee was established. In March of 1996, the Calgary Regional Health Authority approved the policies relating to diversity that were approved by the Calgary Board of Health and will begin to implement them across all sections of the health authority.

243. In continuing the partnership, CHS, together with the Alberta Multiculturalism Commission (AMC), has developed and piloted a managing diversity simulation training programme, called *Good Water*, targeting senior directors and managers of Calgary Health Services and the Calgary Regional Health Authority. This simulation training tool will be made available through the Commission for use by other health authorities.

244. In conjunction with AMC, the University of Alberta Faculty of Rehabilitation Medicine developed *When Two Worlds Join: Intercultural Skills Training for Field Supervisors*, for clinical instructors who supervise students working in health-care institutions across the province. This initiative reaches 400 students and instructors per year. A training programme, *Cultures in Health*, was developed out of this work and has been delivered to health care institutions across Alberta. The faculty is on the verge of approving a required course for all occupational and physiotherapy students that will assist them with skills to deal more effectively with cultural diversity. The materials that were collected for this course have been shared with AMC and are available for other clients to use. A national conference for occupational therapists will include a workshop on diversity.

245. The University of Alberta Faculty of Rehabilitation Medicine, also in conjunction with AMC, has taken a leadership role in a provincial Culture-In-Health Cohort since 1992. In 1994, there were over 25 culture in health initiatives participating in the cohort from across Alberta.

246. The Edmonton Local Board (EBH) of Health helped to initiate a project in 1990 to establish a language bank of interpreters and translators to be utilized by many social services agencies. EBH recognizes the cost benefit of providing translators and interpreters and has allocated funds for these services into their budget. AMC helped initiate a project where EBH consulted with the ethnocultural community to determine their health needs and to learn how the community could better access existing health services. AMC, Grant MacEwan Community College and EBH jointly developed a childbirth project which gave women from the ethnocultural community good

information about Canadian health care systems. These volunteers help EBH provide better pre- and post-natal care to the community. These customer-focused initiatives positioned EBH well to take advantage of changes happening in the heath area. Diversity has been incorporated into their organizational change process.

247. The Bethany Care Society, Calgary, with AMC support, initiated a valuing diversity process and conducted a needs assessment study in March 1994. Bethany is currently implementing the recommendations of the study.

248. The Southern Occupational Health Resource Service, Department of Community Health Science, University of Calgary, has received funding from the AMC (1994-1995) for a partnership project with the Calgary Chinese Community Services Association to undertake occupational health education within Calgary Chinese Community small businesses. This community development project is developing a model for doing this type of community education work collaboratively within the ethnocultural communities.

249. In collaboration with AMC, the University of Alberta Faculty of Rehabilitation Medicine has been leading an Alberta provincial network (cohort) of culture-in-health initiatives since 1992. As of December 1994, more than 25 initiatives across Alberta were linked through the cohort.

250. Consultation has been provided to the Community Education Services of the Alberta Alcohol and Drug Abuse Committee (AADAC), the Canadian Cancer Foundation in Edmonton and the Children's Health Centre of Northern Alberta to assist in identifying ways to reach out and improve services to ethnocultural communities. Through this consultation, AADAC learned that sometimes AADAC is misunderstood by ethnic communities. AADAC is developing "Cultural Sensitivity" workshops for its employees and the Children's Health Centre has included a multicultural dimension in its October 1994 Family Centred Care Conference. During their revisions to the Peer Support Program, AADAC received assistance from AMC to ensure that materials dealt appropriately with diversity. The teacher's resource as well as the programme training modules have been revised to introduce the concept of diversity.

251. The University of Lethbridge School of Nursing, with support from AMC, has developed video tools to help health professionals work with culturally and linguistically different clients. In 1994, a video and curriculum guide about working with Hispanic patients was produced.

252. Since 1991, the Psychologists Association of Alberta Task Force on Cross-Cultural Psychology has examined professional practice issues and explored changes in the code of ethics for its members. They have been working to include course(s) in counselling across cultures as part of post-secondary training.

253. The Alberta Association of Social Workers (AASW) 1995 Annual Conference focused on intercultural and organizational change initiatives related to diversity. AMC helped design the opening plenary session that compared traditional healing with that of four different counselling and mental health professions.

Justice

254. The Correctional Services Division of Alberta Justice concentrates most cultural training efforts on Aboriginal awareness.

255. Correctional Staff receive awareness training in Aboriginal culture from a contracted Aboriginal trainer, and offenders are encouraged to retain or cultivate links with their Aboriginal heritage. Major correctional centres retain Aboriginal Elders on contract to assist Aboriginal offenders with traditional ceremonies, such as sweat lodges, sweet grass smudging, ceremonial fasting and pow wows. They additionally advise offender self-help groups formed under the *Societies Act*, that are known as Native Brotherhood/Sisterhood groups. Access to Aboriginal healing practices may be approved by correctional centre health care providers.

256. Aboriginal organizations, under contract to the Department of Justice, perform community supervision of offenders and manage one minimum security correctional centre. Senior supervisors received a presentation on cultural diversity from a representative of the Department of Community Development. Spiritual and dietary services for the diverse needs of various cultural groups can be accommodated.

BRITISH COLUMBIA

Introduction: the role of Office of the Ombudsman

257. In addition to the specific measures taken to implement this Convention which are described in the following paragraphs, the mandate of the Office of the Ombudsman addresses the intent of the Convention in a comprehensive way. Under the terms of the *Ombudsman Act*, the Ombudsman can investigate complaints by members of the public against public officials and agencies to determine if the public is being treated fairly.

258. The Office of the Ombudsman has a set of guiding principles, a copy of which is provided with these materials as a reference. Additional resource documents provided are reports completed by the office of the Ombudsman during the reporting period.

Article 2: Legislative or other measures and Article 11: Rules of Practice for interrogations, custody and treatment

259. The Ministry of Attorney General is responsible for enforcement of provincial statutes and prosecution of offenses under the *Criminal Code* of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhumane treatment.

260. For police officers, standards of conduct are regulated by the *Police Act*, R.S.B.C. 1979 and by regulation entitled the *Discipline Code* (Reg 330/75, as amended by B.C. Reg. 142/89 (see appendix BC-1). The B.C. *Discipline Code* delineates 14 categories of "misconduct" including, but not limited to, discreditable conduct, neglect of duty, deceit, abuse of authority, improper use of firearms and criminal conduct. Sanctions range from a written reprimand to a recommendation to the police board for dismissal. Relevant Provincial Policing Standards and the Police Code of Ethics are included in the appendix to this report. Accountability under these regulations is ensured through the operations of independent municipal Police Boards and the B.C. Police Commission.

261. In British Columbia, custody of prisoners and inmates is the responsibility of the Attorney General. Court Services Branch, Sheriffs' Services, provide in-court custody and escort of prisoners while the Corrections Branch provides care, custody and control of remanded and sentenced inmates.

262. Correctional officers derive the authority to use force in their capacity as peace officers pursuant to the *Criminal Code of Canada* as well as the B.C. *Correctional Centre Rules and Regulations* (included as appendix BC-2). Reasonable force may be used only to prevent the commission or continuation of an offense; maintain or restore order; apprehend an offender; or to provide assistance to another officer in any of the above. Corrections Branch policies further define the situations and circumstances where force may be applied. The guiding principle is that the force used shall not exceed that which is necessary to effect control and it shall be discontinued at the earliest reasonable opportunity.

Article 3: Return to another State

263. While immigration and refugee determination are federal responsibilities, on 1 April 1991, the British Columbia Court of Appeals upheld the B.C. Supreme Court decision in *Gonzeles-Davis v. Legal Services Society*, which said that the Legal Services Society of British Columbia is required to provide counsel for individuals facing an immigration proceeding that may result in removal from Canada. Although statistics are not kept on the number of alleged victims of torture among refugees facing deportation, there were 1,541 Convention refugee determination cases represented in fiscal year 1995/96. (Statistics are not available for previous years.) The Legal Services Society reports that allegations of torture, or fear of torture, are not uncommon among refugee claimants.

Articles 6 and 7: Custody as necessary for prosecution or extradition

264. The Corrections Branch, Ministry of Attorney General, only admits to custody those persons who have appeared before the courts and have been bound by a committal order issued according to law. The decision to prosecute or extradite remains with the office of the Crown counsel.

Article 10: Training of public officials

265. Specialized training for physicians in the treatment of victims of torture is not funded directly by the government. Physician training and upgrading is the responsibility of the University of British Columbia Faculty of Medicine and Continuing Medical Education Department. The Faculty of Medicine has recently established a Cross Cultural Psychiatry Program. Training sessions, which were open to all interested care providers, have included discussion of victims of torture. Some health service agencies, such as the REACH clinic in Vancouver, draw on the expertise of the Vancouver Association for the Survivors of Torture (VAST) to help them develop their skills in serving this population.

266. Training of police and correctional officers is delivered primarily through the Justice Institute of British Columbia through the operations of the Police Academy and the Corrections Academy. Recruit training of municipal police officers at the Police Academy emphasizes those sections of the *Canadian Charter of Rights and Freedoms* which are concerned with the legal rights or the various protections afforded to those persons in contact with the Canadian criminal justice system. These legal rights, together with Charter sections which address equality rights and remedies available for the infringement of Charter rights, receive significant review and analysis throughout the recruit training process. Additionally, training defines and cultivates core communication skills and demonstrates through its programming how to use these skills effectively in many kinds of difficult interviewing situations.

267. In addition to a recruit training programme which emphasizes the significance of the fundamental rights of citizens, additional protections are afforded to those detained by the police through the utilization of videotaping equipment. Many municipal police departments have available equipment for the video recording of interviews of suspects in a criminal investigation. The use of the video camera in the interrogation setting is regarded as being of value to both the police and the suspect in that it records with certainty the questioning as it took place. Additional details concerning police use of force training are included in appendix BC-1.

Article 12: Prompt and impartial investigations and Article 13: Right to complain

268. With respect to complaints against police, the *Police Act*, proclaimed in 1989, provides for a public complaint process and the appointment of a Complaint Commissioner who is responsible for monitoring the handling of complaints by police departments and for acting generally in the public interest to ensure that complaints are handled in a manner specified by the Act. Specifically, the Complaint Commissioner is responsible for receiving and recording complaints, and advising and assisting complainants, officers complained against, chiefs of police and police boards regarding complaints. On a regular basis, the Complaint Commissioner's office inspects the police department's systems for handling complaints. See appendix BC-1 for additional details.

269. Inmates held in provincial correctional centres have rights of complaint established under the *Correctional Centre Rules and Regulations*. Section 39 establishes a consultation process whereby an inmate may request to see the centre director or other officer to address a concern. The director or officer must meet with the inmate and then must advise the inmate of the decision regarding the issue or concern. Section 40 establishes the process for inmates to file written complaints to an officer, centre director, district director or regional director. The person receiving the complaint must investigate the complaint and reply to the inmate within seven days. Section 41 establishes a process whereby inmates may make a written complaint or grievance to the Director of the Investigation, Inspection and Standards Office (II&SO). All such complaints are to be responded to in writing. See appendix BC-1 for additional details.

Article 16: Other acts of cruel, inhuman or degrading treatment

270. The new *Child, Family and Community Service Act*, which came into force on 29 January 1996, expands the definition of children in need of protection and will include physical harm, emotional harm, sexual abuse and sexual exploitation. Under the Act, acts of cruel, inhuman or degrading treatment or punishment towards a child are considered to be child abuse regardless of the abuser's relationship to the child. Anyone, including a public official or a person acting in an official capacity who abuses a child must be reported under section 14 of the Act.

271. Everyone has a duty to report to the Director whenever there is reason to believe that a child needs protection (section 14). Under section 16 of the Act, the Director makes an immediate assessment of every report about a child's need for protection. After the assessment, the Director may offer support services to the child or family, refer the child and family to a community agency, or conduct an investigation to determine whether the child needs protection.

Issues from previous reports to the United Nations

Complaint by two immigrants of chinese origin against members of the Vancouver Emergency Response Team

272. On 18 February 1992, a complaint was filed by two citizens under the *Citizen Complaint Procedures* of the *Police Act* regarding alleged excessive use of force by members of the Emergency Response Team of the Vancouver Police Department. The complaint arose out of an incident on 9 February 1992 when ERT members, acting on information that the occupants of a house were in possession of firearms and drugs, obtained a search warrant and entered the residence. Subsequently, ERT members were videotaped outside the residence with one of the occupants face down on the ground. The complainant was holding his hands against his chest and would not release them for handcuffing. He was struck once on the right side which caused him to release his right arm. He was then struck on the left side and he released his other arm at which time he was handcuffed. No further force was used once members had gained control of his arms.

273. According to the Vancouver Police Department, both blows were struck in accordance with diversionary tactics that were deemed to be necessary in the circumstances. According to the police, ERT members had experiences with hidden weapons in similar situations.

274. An investigation of the complaint was conducted by the Vancouver Police Department and the report was forwarded to the Regional Crown Counsel who concluded that no criminal charges were warranted against the ERT members. This matter was also reviewed by two other Crown Counsel and an outside counsel in private practice who agreed with the original decision that charges were not justified.

275. As the police officers had carried out their duties in accordance with training and departmental policy, the Vancouver Police Department concluded that no charges under the *Police Act* would be forthcoming.

276. Pursuant to section 50(2) of the *Police Act*, an Inspector from the Victoria Police Department and the Complaint Commissioner reviewed the investigation file and concluded that a thorough investigation had been conducted. They also concurred that no disciplinary charges should be laid. The Complaint Commissioner confirmed that the Police Department had complied with the *Citizen Complaint Procedures* under the Act.

277. The complainants were advised of the outcome of the investigation and of their right to request a public inquiry to have the matter reviewed in a meeting with officials from the police department, Crown Counsel, British Columbia Civil Liberties Association and the office of the Complaint Commissioner. Neither of the complainants requested a public inquiry. A civil law suit against the City of Vancouver was settled on a without prejudice basis.

278. As a result of this incident, on 27 May 1996, the Police Commission announced that it would review Emergency Response Teams under its authority to conduct inquiries and investigations. However, on 2 June 1996, Mr. Justice W.T. Oppal was appointed to conduct an independent inquiry into all aspects of policing, including ERT procedures. The Commission's proposed study was subsumed into the Commission of Inquiry mandate. The above information was communicated to the Secretary-General of the International Secretariat, Amnesty International.

British Columbia Council of Human Rights

279. The *British Columbia Human Rights Act* prohibits discrimination in employment, housing, public services and publications on the grounds of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex and sexual orientation. In addition, employers cannot discriminate because of age (19-64), political belief or unrelated criminal charges or convictions, and landlords cannot discriminate because of a person's source of income. Acts of cruel, inhuman or degrading treatment or punishment but which do not amount to torture could be encompassed by the prohibitions under this Act. For example, complaints concerning harassment or other terms and conditions of employment may involve cruel, inhuman or degrading treatment or punishment. Canadian jurisprudence has made it clear that intention to discriminate is not required in order for conduct to contravene the *Human Rights Act*. The Act applies not only to private citizens but to provincial public officials and members of other organizations regulated by the province.

280. The *Human Rights Act* is administered by the British Columbia Council of Human Rights, an independent quasi-judicial tribunal. Any person may file a complaint alleging discrimination contrary to the Act. Complaints are investigated by human rights officers of the Council. If there is a reasonable basis in the evidence for proceeding to the next stage, the complaint is referred to a hearing before a Council member. If a Council member determines at a hearing that discrimination has occurred, he or she makes an order under the Act which allows for several remedies: (a) a cease and desist order; (b) making available the right, opportunity or privilege that was denied; (c) compensation for any wages or salaries lost, or expenses incurred; and (d) damages for injury to feelings and self-respect.

281. The *Human Rights Act* also prohibits retaliation against people involved in a complaint. Under the Act, no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under the Act. Complaints of retaliation can be made to the Council in the same manner as other complaints of discrimination.

282. From 1991 to present, the British Columbia Council of Human Rights has offered educational programmes to children and adults, schools and businesses.

Female genital mutilation

283. In Canada, the existing provisions of the *Criminal Code* for Assault Causing Bodily Harm provide the authority to address this practice. In British Columbia, the practice of female genital mutilation is covered under the *Child, Family and Community Services Act* as being a circumstance when protection is needed by a child. Section 13 of the Act outlines examples of harm, including physical harm, deprivation of necessary health care, and serious impairment of a child's development by a treatable condition. Section 14 of the Act indicates that these situations must be reported to the Director.

APPENDIX BC-1

Additional material relevant to article 2: provincial policing standards

Provincial Policing Standards, the first of their kind in Canada, were developed as a joint project of the Police Commission and the British Columbia Association of Chiefs of Police by police officers seconded to the Commission. The Standards identify 440 specific areas where a police department should have policies and inspections by the Commission are based on those Standards. The Standards are aimed at identifying minimum acceptable standards for police which are uniformly applicable in all municipal departments.

The Standards which address areas relevant to the United Nations Convention include the following:

(a) Use of force

- The discharge of warning shots
- The carrying and storage of weapons and while off duty
- The use and control of weapons and ammunition
- The inspection of firearms
- The training and qualification of officers authorized to use weapons or firearms
- The requirement that a written report be submitted when an officer or other employee:
  - Takes an action that results in (or is alleged to have resulted in) injury or death of another person
  - Applies force through the use of a weapon
  - Discharges a firearm, other than in training, and/or
  - Applies force by any means, other than routine handcuffing or low levels of restraint procedures for reviewing incidents in which an officer applies force by means of a weapon or firearm, lateral neck restraint, or the application of force, by any means, other than routine handcuffing or low levels of restraint and compliance
  - Training and qualification for the use of the lateral neck restraint technique;

(b) Internal investigations

- The establishment of administrative policies for the purposes of creating a process to ensure the integrity of the department's impartiality, fairness and objectivity when investigating members of the department
- The establishment of guidelines to ensure that complaints are categorized appropriately;

(c) Prisoner transportation

- Special care methods required for the transportation of mentally disturbed, handicapped, sick or injured prisoners
- The use of restraint methods during transportation
- The transportation of prisoners of the opposite sex;

(d) Detention facilities

- Restricted access to the facility by all persons including police
- Minimum physical plant conditions such as proper lighting, air circulation, access to toilet, washing, sleeping and drinking facilities
- Confidential access to legal counsel and telephone
- Constant monitoring of prisoners by staff
- Securing of firearms in the holding facility
- Security alarm systems linked to designated control points
- Booking in procedures including the notation of apparent physical or psychological conditions present at the time of booking
- The use of video surveillance and recording equipment for all prisoner booking areas
- The recording of all significant occurrences in the detention facility
- The provision of medical care services in facilities
- Procedures to ensure lawful and timely release from custody
- Separate facilities for young offenders and females
- Special handling and observation of prisoners under the influence of alcohol or drugs or who are violent or self-destructive;

(e) The use of dogs

- Procedures to ensure that the deployment of dogs is appropriate.

Of particular relevance to the United Nations Convention is the fact that training at the Police Academy communicates and strengthens the message to police members that the municipal police service in British Columbia is committed to responding to community needs and criminal matters in an equitable, responsible and humanitarian manner. Specifically, this message is reinforced through the Academy's emphasis in training on the relevance and significance of the

*Canadian Charter of Rights and Freedoms**, provincial-territorial human rights codes, policies and practices for dealing with police conduct and public complaint processes. In all areas of recruit training, academy staff and curriculum reinforces the officer's duty to respect fundamental rights and freedoms and provides an important, positive affirmation and reinforcement of the basic tenet that law enforcement activities and the administration of justice must operate within the confines and limits of fundamental rights and freedoms.

Code of ethics

Increasingly, B.C. municipal police departments are recognizing that recruit officers should be taught ethical decision making in the Police Academy and that this training should be reinforced throughout one's career. A major goal of police ethics is seen as the development of moral sensitization, the nurturing of moral breadth and depth, fostering the acceptance of certain "culturally universal" moral understandings, a widening of moral horizons, and stimulating a greater sensitivity to the rich fabric, many layers and finer nuances of human interaction. The development of a positive code of ethics is viewed as an important tool to guide police officers and lessen the potential for abuse or misuse of their discretionary powers. In view of the potential significance of ethics in policing, the Police Academy hosted a very successful conference on "Police Ethics: A Key to Professionalism" in June, 1995. The event provided an opportunity for members of the policing community, academics and members of civilian oversight organizations to meet and examine issues related to police professionalism and ethics.

The conference generated considerable interest in pursuing the development of guidelines for a code of ethics for the province of British Columbia. One of the outcomes of the conference was the establishment of a Joint Ethics Review Committee at the Vancouver Police Department. The mandate of this committee is to develop and eventually implement a code of ethics for the Vancouver Police Department, with anticipated adoption by other municipal departments in the future.

The Police Academy is also in the process of developing a programme for the enhancement of police ethics in their curriculum. The programme focuses not only on the infusion of values, but also on their maintenance so as to foster consistency and achievement of the high standards of integrity commonly displayed by professional police officers. Police officers must be cognizant of standards for the treatment of the public. They include the principles that all persons have the right to equal respect and concern, that ethical judgments must be impartial with respect to the interests of individuals and that rules prescribing differential treatment of persons are permissible only when they are justified by relevant differences in those persons (e.g. differences that must be taken into account if the requirement of equal respect is to be satisfied).

Additional material relevant to article 10:
police use of force training

In British Columbia, three areas dictate the grounds by which police officers may use lethal force or, in some cases, indicate the intent to use lethal force (i.e. drawing and presenting a firearm) or use a firearm for another purpose. These areas are the *Criminal Code*, the *B.C. Police Act* and individual departmental policy.

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* Legal updates are also developed and distributed to police personnel by the Police Academy of the Justice Institute of British Columbia several times a year.

Section 25 of the *Criminal Code* authorizes the use of lethal force by a peace officer within specific parameters. Furthermore, provincial regulations outlined in the *B.C Police Act* and *Police Firearm Regulations* include specific guidelines for the use of police firearms. The *Police Act* requires that, before discharging a firearm, an officer ensures that lesser levels of force are not readily available. In addition to this legislation, each department has a specific policy regarding lethal force and the use and discharge of police firearms and other weapons. The Police Commission has also developed general provincial standards on the use of force for municipal police departments. A law enforcement officer acting outside the legislation above may not be protected criminally or civilly in using the firearm. Moreover, municipal police officers are accountable for their use of force under the *Discipline Code in the Police (Discipline) Regulation*, which makes it a disciplinary default for an officer to use firearms improperly or use any unnecessary violence against a person. All persons authorized to carry firearms must be completely aware of the rules governing their use and considerable time is spent outlining use of force issues during recruit training at the Police Academy. Training of officers in the use of force during the late 1970s was relatively basic and included pistol shooting, boxing and physical training. Today, training emphasizes conceptual models of force options, theories about appropriate ways to use force options and the importance of reasoned discretion in the selection of force options. Police learn that they have less-than-lethal alternatives available in situations calling for force with training models containing options such as the following:

- Officer presence;
- Dialogue and communication;
- Empty-hand control tactics;
- Intermediate weapons; and
- Firearms and deadly force.

Officers are also trained in the following skills regarding use of force:

- Communication skills;
- Conflict resolution and intervention skills;
- Mediation;
- Force models and philosophy;
- Officer survival and awareness, and
- Series incident methodologies.

Intervention, defusing and mediation skills are recognized as essential in the training of municipal police officers. Officers are taught to recognize the level of violence and tailor a response that ensures effective control of the incident with the least injury to the offender, public and other officers.

In addition to the up-to date use-of-force training provided to officers at the Police Academy, many of the municipal police departments offer in-service training. Moreover, municipal police officers are required (by varying degrees of legislation and department policy) to qualify or certify annually in several areas involving use of force. These include use of force continuum, lateral neck restraint, oleocapsicum spray, baton and firearms.

Currently, the B.C. Police Commission is considering a request for formal implementation of a Provincial Standard for use of force training to ensure consistency in training among the twelve municipal police departments.

Additional material relevant to article 13:
scope of complaint procedures concerning police

The complaint procedures under the *Police Act* cover both municipal and provincial constables. This includes approximately 400 special provincial constables in the province who are employed by corporations, private agencies, federal and provincial corporations and government ministries. For example, special provincial constables are employed by British Columbia Transit to perform security work and by the Stal'atl'imx Nation Tribal Police to conduct investigations in prescribed areas under the general supervision of the RCMP.

The powers of these special provincial constables varies according to the terms of their appointments and the job responsibilities they have been hired by their employers to perform, but they are never as extensive as the powers accorded to municipal police forces. Few categories of special provincial constables carry firearms.

The citizen complaint procedures under the Act provide a different process for special provincial constables than other municipal officers. The disciplinary authority is the Deputy Commissioner of the RCMP rather than the employer. Because the provisions of the Act do not contemplate all aspects of complaints and discipline, special protocols have been signed with several employers to provide further guidance.

Current citizen complaint procedures

An individual may file a written complaint regarding the conduct of an officer with the Complaint Commissioner or at the police department. The person who receives a complaint must provide a complainant with information regarding the complaint process, complainants' rights and a copy of the complaint. If a police department receives a complaint, the Complaint Commissioner's office must be provided with a copy of it. Regular status reports are provided to the complainant. If a matter is informally resolved by the police, the results of the resolution must be provided in writing to the Complaint Commissioner and the complainant.

If a complaint is not resolved informally, the Chief Constable is responsible for ensuring that it is investigated. In normal circumstances, complaints will be investigated by the department concerned. However, where the Chief is unable to appoint an investigator unconnected with the allegation or for any other reason, the Chief may order that the investigation be undertaken by a member of another police force.

Only where a complaint is deemed "frivolous and vexatious", not made in good faith, trivial, insufficiently connected to the complainant or over 6 months old does the Chief Constable have the discretion to refuse to investigate it. The Chief Constable's refusal to investigate may be appealed to a panel consisting of two members of the police board. Once an investigation has been completed, the Chief Constable decides whether the misconduct complaint has been substantiated and, if so, what sanction is appropriate. Complainants have an automatic right of appeal from this decision to a public inquiry composed of civilian members of the police board. If granted leave to appeal, public inquiry decisions may be appealed to the provincial Police Commission. Complaints against Chief Constables and Deputy Chief Constables are forwarded to the chair of the police board who is empowered to appoint an investigator who is unconnected to the Chief or Deputy Chief.

The burden of proof at public inquiries and Commission hearings of complaints is proof beyond a reasonable doubt. Officers complained against are compellable witnesses at a public inquiry.

Chief Constables, police boards and the Police Commission are restricted to the sanctions provided for in the *Discipline Code* referred to under article 2.

Complaint statistics

The following represents the numbers of complaints filed against municipal officers and special provincial constables under the Act between 1990 and 1995 as well as allegations of excessive force.

Year	Total	Special provincial constables	Excessive force
1990	195	N/A	87
1991	221	N/A	97
1992	182	6	61
1993	199	10	69
1994	184	2	74
1995	214	6	65

Reform of the citizen complaint procedures

(a) Policing in British Columbia Commission of Inquiry

In September 1994, the Commission of Inquiry tendered its report, "Closing the Gap". Among its 317 recommendations regarding policing in general, were a number of recommendations for changes to the current complaint process aimed at enhancing police accountability mechanisms. Some of the reforms proposed in this area included:

(a) More stringent oversight by the Complaint Commissioner to ensure that all concerns of citizens are addressed properly;

(b) Increased independence and accountability of the Complaint Commissioner who would report to the legislature;

(c) Better informal resolution mechanisms based on the goals of community policing;

(d) Greater access to the Complaint Commissioner for those who are reluctant to complain to the police;

(e) More detailed and sensitive recording of complaints;

(f) Better mechanisms to address complaints about the quality of service and policies;

(g) More detailed reporting by police to the complainant and the Complaint Commissioner;

(h) Better identification of systemic problems;

(i) Mechanisms to ensure that investigations are conducted by persons who, in appearance and reality, are unbiased;

(j) Increased opportunity for the Complaint Commissioner to investigate public trust matters that do not arise from a citizen complaint;

(k) More stringent review by the Complaint Commissioner of police refusal to investigate;

(l) Stronger mechanisms for ensuring what may be criminal is considered by Crown Counsel; and

(m) More impartial adjudication of police discipline arising from citizen complaints, in a public forum before an independent tribunal.

Complaints concerning corrections officials

In May 1994, the Investigation, Inspection and Standards Office was separated from the Corrections Branch and the mandate and reporting relationship revised. The II&SO is independent of both the Corrections Branch and the Court Services Branch, and the Director reports to the Minister. The mandate of the II&SO includes performing independent investigations at the request of the Minister and investigating complaints or allegations of unnecessary use of force.

Under section 45 of the *Correction Act* the office shall investigate complaints in writing from adult inmates or youths who have been held in a youth custody centre, or a parent or guardian of a youth. The office advises the complainant and Branch management of the results of investigations.

The II&SO generally maintains statistics on the number of complaints received and investigations conducted. In the fiscal years 1990-1991 to 1995-1996 the office and its predecessor organization received 1542 complaints. Of these complaints, 25 related to abuse of process or allegations of unnecessary use of force, of which four were substantiated, none of these occurring in the last three years. Individuals who are not satisfied with the results of investigations may also have their complaints investigated by the Office of the Ombudsman for British Columbia.

Appended resource material

Documents from the Ombudsman's Office

BC-3	Guiding Principles
BC-4	"Listening"
BC-5	"Building Respect"
BC-6	Jericho Hill Report
BC-7	"Fair Schools"

Provincial legislation

BC-8	*Child, Family and Community Service Act*
BC-9	*BC Human Rights Act* and *Human Rights Amendment Act, 1995*
BC-10	*Police Act* – *Discipline Code and Regulations* – *Police Firearm Regulations*
BC-11	*Inquiry Act*

IV: MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES*

NORTHWEST TERRITORIES

Article 2

284. The law and policy of the Northwest Territories remains as outlined in the first and second reports.

Article 10

Physician training

285. The Northwest Territories has neither an independent training programme nor a fully independent registration procedure for physicians. The right to practise medicine in the Territories, granted under the *Medical Profession Act*, RSNWT 1988, rests on proof of training and registration in other jurisdictions. Physician training on the effects of torture might more properly be addressed through these jurisdictions.

Article 11

286. The *Corrections Act*, RSNWT 1988, is unchanged since the second report.

287. There has been one amendment to the Corrections Service operations manual. It was reported in the second report that drugs may be used to control an inmate only with the authorization of the medical officer and the corrections psychologist. However, because not all Correctional Centres have a corrections psychologist it is not always possible to receive authorization of a psychologist. In these cases it is now only required that there be a consultation with and the approval of the medical officer.

Article 16

288. The *Mental Health Act*, RSNWT 1988, which provides the legal framework for involuntary committal, was amended in 1994 to provide greater protection for the civil rights of the mentally disabled. New safeguards include the requirement to provide information in the aboriginal languages, to provide interpreter services, to consult with elders, and to provide court review if patients are held involuntarily for a period in excess of two months. In other respects the Act remains as stated in the second report.

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* Geographical order, from east to west.

YUKON

Article 2: Legislative, administrative, judicial or other measures

289. The Yukon's *Torture Prohibition Act*, S.Y. 1988, c. 26, as previously reported, provides the primary means of civil redress for victims of torture. No amendments have been made to this Act and no cases were brought under this Act for the period of this report.

290. The *Corners Act*, S.Y. 1986, c. 35, was amended (by *An Act to Amend the Corners Act*, S.Y., 1994, c. 6) in 1994 to provide for an investigation and subsequent inquiry of a death where there is reason to believe the death resulted from violence, misadventure or unfair means or a result of negligence, misconduct or malpractice.

291. The *Ombudsman Act*, S.Y. 1995, c. 17, has been enacted to allow an independent Ombudsman to investigate how Yukon government departments, agencies, commissions and boards do business, their actions, decisions, practices and procedures, at not cost to the complainant.

Article 10: Training of public personnel

292. Recruits to the RCMP receive training on the use of force and on relevant provisions of the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*.

293. Information from the Canadian Centre for Victims of Torture regarding the training programme for medical personnel has been requested in order to provide training in compliance with the Convention. No training with respect to the Convention was provided for medical personnel within the Yukon during the period of this report.

Articles, 12, 13 and 14: Victim complaints and investigation

294. The *Ombudsman Act*, S.Y. 1995, c. 17, has been enacted to ensure prompt and independent investigation into complaints against public officials. At the date of this report no complaints had been made to the Ombudsman.

295. There were 58 reported complaints to the Public Complaints Commission against RCMP in the Yukon, 15 being in the nature of assault or excessive force. Of those 15 complaints, eight are under investigation, four were determined to be unfounded and three are awaiting the opinion of the Federal Crown for sentencing of the complainant before an investigation will be commenced. No members of the RCMP in the Yukon were found to be guilty of a complaint during the period of this report.

296. There were no complaints made by correctional inmates with regard to corrections officers charged with the custody of offenders in the Yukon under the *Corrections Act*, S.Y. 1986, c. 26, during the period covered by this report.

297. There were no complaints pursuant to the *Torture Prohibition Act*, S.Y. 1988, c. 26, during the period covered by this report.

List of appendices*

Appendix GC-1 Annexe GC-1	Constitution Act, 1982
Appendix GC-4 Annexe GC-4	The Prison for Women
Appendix GC-5 Annexe GC-5	Chapter C-44.6
Appendix NB-1 Appendix NB-1	Custody and Detention of Young Persons Act Chapter C-40
Appendix NB-2 Annexe NB-2	New Brunswick Regulation 92-71
Appendix NB-3 Annexe NB-3	Policing Arrangements in New Brunswick: 2000 and Beyond
Appendix NB-4 Annexe NB-4	Report of a Commission of Inquiry Established by Order-in-Council 92-1022
Appendix NB-5 Annexe NB-5	Review of Certain Practices in New Brunswick Correctional Institutions – Summary of Report
Appendix NB-6 Annexe NB-6	Chapter V-2.1 – Victims Services Act
Appendix NB-7 Annexe NB-7	New Brunswick Regulation 96-81
Appendix NB-8 Annexe NB-8	Compensation for Victims of Crime Act Seventh Annual Report 1992-1993 Eighth Annual Report 1993-1994 Statistics 1994/95 Fiscal Year
Appendix BC-2 Annexe CB-2	Correction Centre Rules and Regulations 1996
Appendix BC-3 Annexe CB-3	Ombuds Strategic Plan 2001
Appendix BC-4 Annexe CB-4	Listening – a Review of Riverview Hospital
Appendix BC-5 Annexe CB-5	Building Respect – A Review of Youth Custody Centres in BC

* These appendices may be consulted in the files of the Office of the United Nations High Commissioner for Human Rights.

Appendix BC-6 Annexe CB-6	Abuse of Deaf Students at Jericho Hill School Public Report No. 32, November 1993
Appendix BC-7 Annexe CB-7	Fair Schools Public Report No. 35, May 1995
Appendix BC-8 Annexe CB-8	Child, Family and Community Service Act Chapter 46
Appendix BC-9 Annexe CB-9	Human Rights Act Chapter 22
Appendix BC-10 Annexe CB-10	Police Act Chapter 367
Appendix BC-11 Annexe CB-11	Inquiry Act Chapter 224